

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1008

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AN ACT to amend the Indiana Code concerning transportation and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 4-4-10.9-1.2, AS ADDED BY P.L.235-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.2. "Affected statutes" means all statutes that grant a power to or impose a duty on the authority, including but not limited to IC 4-4-11, **IC 4-4-11.4**, IC 4-4-21, IC 4-13.5, IC 8-1-33, IC 8-9.5, IC 8-14.5, IC 8-15, **IC 8-15.5**, IC 8-16, IC 13-18-13, IC 13-18-21, IC 13-19-5, IC 14-14, and IC 15-7-5.

SECTION 2. IC 4-22-2-37.1, AS AMENDED BY P.L.235-2005, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 37.1. (a) This section applies to a rulemaking action resulting in any of the following rules:

- (1) An order adopted by the commissioner of the Indiana department of transportation under IC 9-20-1-3(d) or IC 9-21-4-7(a) and designated by the commissioner as an emergency rule.
- (2) An action taken by the director of the department of natural resources under IC 14-22-2-6(d) or IC 14-22-6-13.
- (3) An emergency temporary standard adopted by the occupational safety standards commission under IC 22-8-1.1-16.1.
- (4) An emergency rule adopted by the solid waste management board under IC 13-22-2-3 and classifying a waste as hazardous.

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- (5) A rule, other than a rule described in subdivision (6), adopted by the department of financial institutions under IC 24-4.5-6-107 and declared necessary to meet an emergency.
- (6) A rule required under IC 24-4.5-1-106 that is adopted by the department of financial institutions and declared necessary to meet an emergency under IC 24-4.5-6-107.
- (7) A rule adopted by the Indiana utility regulatory commission to address an emergency under IC 8-1-2-113.
- (8) An emergency rule adopted by the state lottery commission under IC 4-30-3-9.
- (9) A rule adopted under IC 16-19-3-5 that the executive board of the state department of health declares is necessary to meet an emergency.
- (10) An emergency rule adopted by the Indiana ~~transportation~~ finance authority under IC 8-21-12.
- (11) An emergency rule adopted by the insurance commissioner under IC 27-1-23-7.
- (12) An emergency rule adopted by the Indiana horse racing commission under IC 4-31-3-9.
- (13) An emergency rule adopted by the air pollution control board, the solid waste management board, or the water pollution control board under IC 13-15-4-10(4) or to comply with a deadline required by federal law, provided:
  - (A) the variance procedures are included in the rules; and
  - (B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.
- (14) An emergency rule adopted by the Indiana election commission under IC 3-6-4.1-14.
- (15) An emergency rule adopted by the department of natural resources under IC 14-10-2-5.
- (16) An emergency rule adopted by the Indiana gaming commission under IC 4-33-4-2, IC 4-33-4-3, or IC 4-33-4-14.
- (17) An emergency rule adopted by the alcohol and tobacco commission under IC 7.1-3-17.5, IC 7.1-3-17.7, or IC 7.1-3-20-24.4.
- (18) An emergency rule adopted by the department of financial institutions under IC 28-15-11.
- (19) An emergency rule adopted by the office of the secretary of family and social services under IC 12-8-1-12.
- (20) An emergency rule adopted by the office of the children's health insurance program under IC 12-17.6-2-11.
- (21) An emergency rule adopted by the office of Medicaid policy and planning under IC 12-15-41-15.

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(22) An emergency rule adopted by the Indiana state board of animal health under IC 15-2.1-18-21.

(23) An emergency rule adopted by the board of directors of the Indiana education savings authority under IC 21-9-4-7.

(24) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-34.

(25) An emergency rule adopted by the department of local government finance under IC 6-1.1-4-33.

(26) An emergency rule adopted by the boiler and pressure vessel rules board under IC 22-13-2-8(c).

(27) An emergency rule adopted by the Indiana board of tax review under IC 6-1.1-4-37(l) or an emergency rule adopted by the department of local government finance under IC 6-1.1-4-36(j) or IC 6-1.1-22.5-20.

(28) An emergency rule adopted by the board of the Indiana economic development corporation under IC 5-28-5-8.

(29) A rule adopted by the department of financial institutions under IC 34-55-10-2.5.

**(30) A rule adopted by the Indiana finance authority:**

**(A) under IC 8-15.5-7 approving user fees (as defined in IC 8-15.5-2-10) provided for in a public-private agreement under IC 8-15.5;**

**(B) under IC 8-15-2-17.2(a)(10):**

**(i) establishing enforcement procedures; and**

**(ii) making assessments for failure to pay required tolls;**

**(C) under IC 8-15-2-14(a)(3) authorizing the use of and establishing procedures for the implementation of the collection of user fees by electronic or other nonmanual means; or**

**(D) to make other changes to existing rules related to a toll road project to accommodate the provisions of a public-private agreement under IC 8-15.5.**

(b) The following do not apply to rules described in subsection (a):

(1) Sections 24 through 36 of this chapter.

(2) IC 13-14-9.

(c) After a rule described in subsection (a) has been adopted by the agency, the agency shall submit the rule to the publisher for the assignment of a document control number. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The publisher shall determine the number of copies of the rule and other documents to be submitted under this subsection.

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(d) After the document control number has been assigned, the agency shall submit the rule to the secretary of state for filing. The agency shall submit the rule in the form required by section 20 of this chapter and with the documents required by section 21 of this chapter. The secretary of state shall determine the number of copies of the rule and other documents to be submitted under this subsection.

(e) Subject to section 39 of this chapter, the secretary of state shall:

- (1) accept the rule for filing; and
- (2) file stamp and indicate the date and time that the rule is accepted on every duplicate original copy submitted.

(f) A rule described in subsection (a) takes effect on the latest of the following dates:

- (1) The effective date of the statute delegating authority to the agency to adopt the rule.
- (2) The date and time that the rule is accepted for filing under subsection (e).
- (3) The effective date stated by the adopting agency in the rule.
- (4) The date of compliance with every requirement established by law as a prerequisite to the adoption or effectiveness of the rule.

(g) Subject to subsection (h), IC 14-10-2-5, IC 14-22-2-6, IC 22-8-1.1-16.1, and IC 22-13-2-8(c), and except as provided in subsections (j), ~~and (k)~~, **and (l)**, a rule adopted under this section expires not later than ninety (90) days after the rule is accepted for filing under subsection (e). Except for a rule adopted under subsection (a)(13), (a)(24), (a)(25), or (a)(27), the rule may be extended by adopting another rule under this section, but only for one (1) extension period. The extension period for a rule adopted under subsection (a)(28) may not exceed the period for which the original rule was in effect. A rule adopted under subsection (a)(13) may be extended for two (2) extension periods. Subject to subsection (j), a rule adopted under subsection (a)(24), (a)(25), or (a)(27) may be extended for an unlimited number of extension periods. Except for a rule adopted under subsection (a)(13), for a rule adopted under this section to be effective after one (1) extension period, the rule must be adopted under:

- (1) sections 24 through 36 of this chapter; or
- (2) IC 13-14-9;

as applicable.

(h) A rule described in subsection (a)(6), (a)(8), (a)(12), or (a)(29) expires on the earlier of the following dates:

- (1) The expiration date stated by the adopting agency in the rule.
- (2) The date that the rule is amended or repealed by a later rule adopted under sections 24 through 36 of this chapter or this section.

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(i) This section may not be used to readopt a rule under IC 4-22-2.5.  
 (j) A rule described in subsection (a)(24) or (a)(25) expires not later than January 1, 2006.

(k) A rule described in subsection (a)(28) expires on the expiration date stated by the board of the Indiana economic development corporation in the rule.

**(l) A rule described in subsection (a)(30) expires on the expiration date stated by the Indiana finance authority in the rule.**

SECTION 3. IC 5-10.3-6-8.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE DECEMBER 31, 2005 (RETROACTIVE)]: **Sec. 8.9. (a) This section applies when certain employees of the state in particular departmental, occupational, or other definable classifications are terminated from employment with the state as a result of:**

- (1) a lease or other transfer of state property to a nongovernmental entity; or**
- (2) a contractual arrangement with a nongovernmental entity to perform certain state functions.**

**(b) The governor shall request coverage under this section from the board whenever an employee of the state is terminated as described in subsection (a).**

**(c) The board must approve a request from the governor under subsection (b) unless approval violates subsection (k), federal or state law, or the terms of the fund.**

**(d) As used in this section, "early retirement" means a member is eligible to retire with a reduced pension under IC 5-10.2-4-1, because the member:**

- (1) is at least fifty (50) years of age; and**
- (2) has at least fifteen (15) years of creditable service.**

**(e) As used in this section, "normal retirement" means a member is eligible to retire under IC 5-10.2-4-1, because:**

- (1) the member is at least sixty-five (65) years of age and has at least ten (10) years of creditable service;**
- (2) the member is at least sixty (60) years of age and has at least fifteen (15) years of creditable service; or**
- (3) the member's age in years plus the member's years of service is at least eighty-five (85) and the member is at least fifty-five (55) years of age.**

**(f) The withdrawal of the employees described in subsection (a) from the fund is effective on a termination date established by the board. The board may not establish a termination date that occurs before all of the following have occurred:**

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(1) The governor has requested coverage under this section and provided written notice of the following to the board:

(A) The intent of the state to terminate the employees from employment.

(B) The names of the terminated employees as of the date that the termination is to occur.

(2) The expiration of a thirty (30) day period following the filing of the notice with the board.

(3) The state complies with subsections (g) and (i).

(g) A member who:

(1) is an employee of the state described in subsection (a) with at least twenty-four (24) months of creditable service as of the date of the notice under subsection (f); and

(2) is listed in the notice under subsection (f);

is vested in the pension portion of the member's retirement benefit. The state must contribute to the fund the amount the board determines is necessary to completely fund the vested benefit. The contribution by the state must be made in a lump sum or in a series of payments determined by the board. The benefit for the member shall be computed under IC 5-10.2-4-4 using the member's actual years of creditable service.

(h) A member who is covered by subsection (g) and who is at least sixty-five (65) years of age as of the date of the notice under subsection (f) may elect to retire under IC 5-10.2-4-1 even if the member has less than ten (10) years of service. The benefit for the member shall be computed under IC 5-10.2-4-4 using the member's actual years of creditable service.

(i) A member who is covered by subsection (f) and who, as of the date of the notice under subsection (f), is less than twenty-four (24) months from being eligible for normal or early retirement under IC 5-10.2-4-1 may elect to retire by purchasing the service credit needed for retirement under the following conditions:

(1) The state shall contribute to the fund an amount determined under IC 5-10.2-3-1.2 and payable from the sources described in subsection (j) sufficient to pay the member's contributions required for the member's purchase of the service credit the member needs to retire.

(2) The maximum amount of creditable service that the state may purchase for a member under this subsection is twenty-four (24) months.

(3) The benefit for the member shall be computed under IC 5-10.2-4-4 using the member's actual years of creditable

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service plus all other service for which the fund gives credit, including the creditable service purchased under this subsection.

(j) The amounts that the state is required to contribute to the fund under subsection (i) must come from the following sources:

(1) If the state receives monetary payments under the lease or contractual arrangement described in subsection (a), the proceeds of the monetary payments received by the state. The state may not require, as a condition of the transaction to transfer state property or have certain state functions performed by a nongovernmental entity, that the nongovernmental entity directly or indirectly pay the amounts that the state is required to contribute under subsection (i).

(2) If the state does not receive any monetary payments under the lease or contractual arrangement described in subsection (a), any remaining appropriations made to the state department, agency, or other entity terminating the employees described in subsection (a).

(3) If the sources described in subdivisions (1) and (2) do not fully fund the amounts that the state is required to contribute to the fund under subsection (i), the board shall request that the general assembly appropriate the amount necessary to fully fund the state's required contribution under subsection (i) in the next biennial state budget.

(k) The board shall evaluate each withdrawal under this section to determine if the withdrawal affects the fund's compliance with Section 401(a) of the Internal Revenue Code of 1954, as in effect on September 1, 1974. The board may deny an employee permission to withdraw if the denial is necessary to achieve compliance with Section 401(a) of the Internal Revenue Code of 1954, as in effect on September 1, 1974.

SECTION 4. IC 6-3.5-7-13.1, AS AMENDED BY P.L.118-2005, SECTION 2, AND AS AMENDED BY P.L.214-2005, SECTION 21, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.1. (a) The fiscal officer of each county, city, or town for a county in which the county economic development tax is imposed shall establish an economic development income tax fund. Except as provided in sections 23, 25, 26, and 27 of this chapter, the revenue received by a county, city, or town under this chapter shall be deposited in the unit's economic development income tax fund.

(b) Except as provided in sections 15, 23, 25, 26, and 27 of this

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chapter, revenues from the county economic development income tax may be used as follows:

(1) By a county, city, or town for economic development projects, for paying, notwithstanding any other law, under a written agreement all or a part of the interest owed by a private developer or user on a loan extended by a financial institution or other lender to the developer or user if the proceeds of the loan are or are to be used to finance an economic development project, for the retirement of bonds under section 14 of this chapter for economic development projects, for leases under section 21 of this chapter, or for leases or bonds entered into or issued prior to the date the economic development income tax was imposed if the purpose of the lease or bonds would have qualified as a purpose under this chapter at the time the lease was entered into or the bonds were issued.

(2) By a county, city, or town for:

(A) the construction or acquisition of, or remedial action with respect to, a capital project for which the unit is empowered to issue general obligation bonds or establish a fund under any statute listed in IC 6-1.1-18.5-9.8;

(B) the retirement of bonds issued under any provision of Indiana law for a capital project;

(C) the payment of lease rentals under any statute for a capital project;

(D) contract payments to a nonprofit corporation whose primary corporate purpose is to assist government in planning and implementing economic development projects;

(E) operating expenses of a governmental entity that plans or implements economic development projects;

(F) to the extent not otherwise allowed under this chapter, funding substance removal or remedial action in a designated unit; or

(G) funding of a revolving fund established under IC 5-1-14-14.

(3) *By a county, city, or town for any lawful purpose for which money in any of its other funds may be used.*

~~(3)~~ (4) *By a city or county described in IC 36-7.5-2-3(b) for making transfers required by IC 36-7.5-4-2. If the county economic development income tax rate is increased after April 30, 2005, in a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000), the first three million five hundred thousand dollars (\$3,500,000) of the tax revenue that results each year from the tax rate increase shall be used by the county only to make the county's transfer required by IC 36-7.5-4-2. The first three million five*

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*hundred thousand dollars (\$3,500,000) of the tax revenue that results each year from the tax rate increase shall be paid by the county treasurer to the treasurer of the northwest Indiana regional development authority under IC 36-7.5-4-2 before certified distributions are made to the county or any cities or towns in the county under this chapter from the tax revenue that results each year from the tax rate increase. In a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000), all of the tax revenue that results each year from the tax rate increase that is in excess of the first three million five hundred thousand dollars (\$3,500,000) that results each year from the tax rate increase must be used by the county and cities and towns in the county for additional homestead credits under subdivision ~~(4)~~ (5).*

*~~(4)~~ (5) This subdivision applies only in a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000). Except as otherwise provided, the procedures and definitions in IC 6-1.1-20.9 apply to this subdivision. All of the tax revenue that results each year from a tax rate increase described in subdivision ~~(3)~~ (4) that is in excess of the first three million five hundred thousand dollars (\$3,500,000) that results each year from the tax rate increase must be used by the county and cities and towns in the county for additional homestead credits under this subdivision. The following apply to additional homestead credits provided under this subdivision:*

*(A) The additional homestead credits must be applied uniformly to increase the homestead credit under IC 6-1.1-20.9 for homesteads in the county, city, or town.*

*(B) The additional homestead credits shall be treated for all purposes as property tax levies. The additional homestead credits do not reduce the basis for determining the state property tax replacement credit under IC 6-1.1-21 or the state homestead credit under IC 6-1.1-20.9.*

*(C) The additional homestead credits shall be applied to the net property taxes due on the homestead after the application of all other assessed value deductions or property tax deductions and credits that apply to the amount owed under IC 6-1.1.*

*(D) The department of local government finance shall determine the additional homestead credit percentage for a particular year based on the amount of county economic development income tax revenue that will be used under this subdivision to provide*

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*additional homestead credits in that year.*

~~(5)~~ **(6)** *This subdivision applies only in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). Except as otherwise provided, the procedures and definitions in IC 6-1.1-20.9 apply to this subdivision. A county or a city or town in the county may use county economic development income tax revenue to provide additional homestead credits in the county, city, or town. The following apply to additional homestead credits provided under this subdivision:*

*(A) The county, city, or town fiscal body must adopt an ordinance authorizing the additional homestead credits. The ordinance must:*

- (i) be adopted before September 1 of a year to apply to property taxes first due and payable in the following year; and*
- (ii) specify the amount of county economic development income tax revenue that will be used to provide additional homestead credits in the following year.*

*(B) A county, city, or town fiscal body that adopts an ordinance under this subdivision must forward a copy of the ordinance to the county auditor and the department of local government finance not more than thirty (30) days after the ordinance is adopted.*

*(C) The additional homestead credits must be applied uniformly to increase the homestead credit under IC 6-1.1-20.9 for homesteads in the county, city, or town.*

*(D) The additional homestead credits shall be treated for all purposes as property tax levies. The additional homestead credits do not reduce the basis for determining the state property tax replacement credit under IC 6-1.1-21 or the state homestead credit under IC 6-1.1-20.9.*

*(E) The additional homestead credits shall be applied to the net property taxes due on the homestead after the application of all other assessed value deductions or property tax deductions and credits that apply to the amount owed under IC 6-1.1.*

*(F) The department of local government finance shall determine the additional homestead credit percentage for a particular year based on the amount of county economic development income tax revenue that will be used under this subdivision to provide additional homestead credits in that year.*

**(7) This subdivision applies only to a county:**

**(A) that has a population of more than one hundred ten**

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thousand (110,000) but less than one hundred fifteen thousand (115,000); and

(B) in which:

- (i) the county fiscal body has adopted an ordinance under IC 36-7.5-2-3(e) providing that the county is joining the northwest Indiana regional development authority; and
- (ii) the fiscal body of the city described in IC 36-7.5-2-3(e) has adopted an ordinance under IC 36-7.5-2-3(e) providing that the city is joining the development authority.

Revenue from the county economic development income tax may be used by a county or a city described in this subdivision for making transfers required by IC 36-7.5-4-2. In addition, if the county economic development income tax rate is increased after June 30, 2006, in the county, the first three million five hundred thousand dollars (\$3,500,000) of the tax revenue that results each year from the tax rate increase shall be used by the county only to make the county's transfer required by IC 36-7.5-4-2. The first three million five hundred thousand dollars (\$3,500,000) of the tax revenue that results each year from the tax rate increase shall be paid by the county treasurer to the treasurer of the northwest Indiana regional development authority under IC 36-7.5-4-2 before certified distributions are made to the county or any cities or towns in the county under this chapter from the tax revenue that results each year from the tax rate increase. All of the tax revenue that results each year from the tax rate increase that is in excess of the first three million five hundred thousand dollars (\$3,500,000) that results each year from the tax rate increase must be used by the county and cities and towns in the county for additional homestead credits under subdivision (8).

(8) This subdivision applies only to a county described in subdivision (7). Except as otherwise provided, the procedures and definitions in IC 6-1.1-20.9 apply to this subdivision. All of the tax revenue that results each year from a tax rate increase described in subdivision (7) that is in excess of the first three million five hundred thousand dollars (\$3,500,000) that results each year from the tax rate increase must be used by the county and cities and towns in the county for additional homestead credits under this subdivision. The following apply to additional homestead credits provided under this subdivision:

- (A) The additional homestead credits must be applied uniformly to increase the homestead credit under

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**IC 6-1.1-20.9 for homesteads in the county, city, or town.**

**(B) The additional homestead credits shall be treated for all purposes as property tax levies. The additional homestead credits do not reduce the basis for determining the state property tax replacement credit under IC 6-1.1-21 or the state homestead credit under IC 6-1.1-20.9.**

**(C) The additional homestead credits shall be applied to the net property taxes due on the homestead after the application of all other assessed value deductions or property tax deductions and credits that apply to the amount owed under IC 6-1.1.**

**(D) The department of local government finance shall determine the additional homestead credit percentage for a particular year based on the amount of county economic development income tax revenue that will be used under this subdivision to provide additional homestead credits in that year.**

(c) As used in this section, an economic development project is any project that:

(1) the county, city, or town determines will:

- (A) promote significant opportunities for the gainful employment of its citizens;
- (B) attract a major new business enterprise to the unit; or
- (C) retain or expand a significant business enterprise within the unit; and

(2) involves an expenditure for:

- (A) the acquisition of land;
- (B) interests in land;
- (C) site improvements;
- (D) infrastructure improvements;
- (E) buildings;
- (F) structures;
- (G) rehabilitation, renovation, and enlargement of buildings and structures;
- (H) machinery;
- (I) equipment;
- (J) furnishings;
- (K) facilities;
- (L) administrative expenses associated with such a project, including contract payments authorized under subsection (b)(2)(D);
- (M) operating expenses authorized under subsection (b)(2)(E); or

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(N) to the extent not otherwise allowed under this chapter, substance removal or remedial action in a designated unit; or any combination of these.

*(d) If there are bonds outstanding that have been issued under section 14 of this chapter or leases in effect under section 21 of this chapter, a county, city, or town may not expend money from its economic development income tax fund for a purpose authorized under subsection (b)(3) in a manner that would adversely affect owners of the outstanding bonds or payment of any lease rentals due.*

SECTION 5. IC 8-14-14 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 14. Major Moves Construction Fund**

**Sec. 1.** As used in this chapter, "authority" refers to the Indiana finance authority established by IC 4-4-11-4.

**Sec. 2.** As used in this chapter, "department" refers to the Indiana department of transportation.

**Sec. 3.** As used in this chapter, "fund" refers to the major moves construction fund established by section 5 of this chapter.

**Sec. 4.** As used in this chapter, "transportation plan" refers to the department's long range comprehensive transportation plan developed under IC 8-23-2-5.

**Sec. 5. (a)** The major moves construction fund is established for the purpose of:

- (1) funding projects under IC 8-15.7 or IC 8-15-3;
- (2) funding other projects in the department's transportation plan; and
- (3) funding distributions under sections 6 and 7 of this chapter.

**(b)** The fund shall be administered by the department.

**(c)** Notwithstanding IC 5-13, the treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as money is invested by the public employees' retirement fund under IC 5-10.3-5. However, the treasurer of state may not invest the money in the fund in equity securities. The treasurer of state may contract with investment management professionals, investment advisors, and legal counsel to assist in the investment of the fund and may pay the state expenses incurred under those contracts from the fund. Interest that accrues from these investments shall be deposited in the fund.

**(d)** The fund consists of the following:

- (1) Distributions to the fund from the toll road fund under IC 8-15.5-11.

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(2) Distributions to the fund from the next generation trust fund under IC 8-14-15.

(3) Appropriations to the fund.

(4) Gifts, grants, loans, bond proceeds, and other money received for deposit in the fund.

(5) Revenues arising from:

(A) a tollway under IC 8-15-3 or IC 8-23-7-22; or

(B) a toll road under IC 8-15-2 or IC 8-23-7-23;

that the department designates as part of, and deposits in, the fund.

(6) Payments made to the authority or the department from operators under IC 8-15.7.

(7) Interest, premiums, or other earnings on the fund.

(e) The fund is considered a trust fund for purposes of IC 4-9.1-1-7. Money may not be transferred, assigned, or otherwise removed from the fund by the state board of finance, the budget agency, or any other state agency.

(f) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

(g) Money in the fund must be appropriated by the general assembly to be available for expenditure.

Sec. 6. (a) If the authority enters into a public-private agreement concerning the Indiana Toll Road under IC 8-15.5, the auditor of state shall make the following distributions from the fund for the indicated purposes:

(1) One hundred fifty million dollars (\$150,000,000) to the treasurer of state for deposit in the motor vehicle highway account established by IC 8-14-1. Notwithstanding IC 8-14-1, on or before October 15, 2006, and on or before October 15, 2007, the auditor of state shall distribute seventy-five million dollars (\$75,000,000) of the money deposited in the motor vehicle highway account under this subdivision to each of the counties, cities, and towns eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1 and in the same proportion among the counties, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1. The auditor of state:

(A) shall make the distributions required by this subdivision separately from distributions required by IC 8-14-1; and

(B) may not combine the distributions required by this subdivision with distributions required by IC 8-14-1.

Money distributed under this subdivision may be used only for

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purposes that money distributed from the motor vehicle highway account may be expended under IC 8-14-1.

(2) The following amounts to the northwest Indiana regional development authority for deposit in the development authority fund established under IC 36-7.5-4-1:

(A) Forty million dollars (\$40,000,000) during the state fiscal year beginning July 1, 2006. During the state fiscal year beginning July 1, 2006, the regional development authority must pay at least twenty million dollars (\$20,000,000) of the distribution received under this clause to an airport authority that is carrying out an airport expansion project described in IC 36-7.5-2-1(2).

(B) Eighty million dollars (\$80,000,000) to be distributed in installments of ten million dollars (\$10,000,000) during the state fiscal year beginning July 1, 2007, and each of the seven

(7) state fiscal years thereafter.

However, no distributions may be made under clause (B) until the development authority's comprehensive strategic development plan prepared under IC 36-7.5-3-4 has been reviewed by the budget committee and approved by the director of the office of management and budget. In addition, no distributions may be made under clause (B) during the state fiscal years beginning July 1, 2009, July 1, 2011, and July 1, 2013, unless the budget committee has reviewed the status of the plan and any changes to the plan.

(3) The following amounts to each of the following counties on or before September 15, 2006, for deposit in local major moves construction funds under IC 8-14-16:

(A) Forty million dollars (\$40,000,000) to each county described in IC 8-14-16-1(1) through IC 8-14-16-1(5). However, if a county described in IC 8-14-16-1(3) becomes a member of the northwest Indiana regional development authority, the distribution to that county is twenty-five million dollars (\$25,000,000) instead of forty million dollars (\$40,000,000).

(B) Twenty-five million dollars (\$25,000,000) to each county described in IC 8-14-16-1(6).

(C) Fifteen million dollars (\$15,000,000) to each county described in IC 8-14-16-1(7).

(4) One hundred seventy-nine million dollars (\$179,000,000) during the state fiscal year beginning July 1, 2006, to the state highway fund for use by the department for preliminary

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engineering, purchase of rights-of-way, or construction of highways, roads, and bridges. After review by the budget committee, and subject to the approval of the governor, the budget agency may augment this distribution from balances available in the fund.

(5) An amount sufficient to provide for the payments owed by the authority as a result of a written agreement entered into under IC 8-15.5-7-6 to fund reductions in, or refunds of, user fees imposed on Class 2 vehicles, or to establish or replenish the reserves therefore, to the administration account of the toll road fund. The budget agency shall determine the amount of the distributions required to be made by this subdivision for each state fiscal year beginning with the state fiscal year ending June 30, 2007, and ending with the state fiscal year ending June 30, 2016.

(6) An amount sufficient to make any payments required by IC 5-10.3-6-8.9 as a result of a public-private agreement under IC 8-15.5.

(b) There is annually appropriated from the fund an amount sufficient to make any distributions required by subsection (a).

Sec. 7. In addition to any distributions required by section 6 of this chapter, money in the fund may be used for any of the following purposes:

- (1) The payment of any obligation incurred or amounts owed by the authority, the department, or an operator under IC 8-15-2, IC 8-15-3, IC 8-15.5, or IC 8-15.7 in connection with the execution and performance of a public-private agreement under IC 8-15.5 or IC 8-15.7, including establishing reserves.
- (2) Lease payments to the authority, if money for those payments is specifically appropriated by the general assembly.
- (3) Distributions to the treasurer of state for deposit in the state highway fund, for the funding of any project in the department's transportation plan.

Sec. 8. (a) The total amount of distributions from the fund for projects or purposes that benefit a county traversed by the Indiana Toll Road may not be less than thirty-four percent (34%) of:

- (1) the money that is transferred to the fund from the toll road fund under IC 8-15.5-11; plus
- (2) the amount initially set aside in the administration account of the toll road fund to establish an escrow account to implement a written agreement entered into under IC 8-15.5-7-6 to fund reductions in, or refunds of, user fees

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imposed on Class 2 vehicles.

(b) The budget agency shall determine the amount of distributions required by this section. In making the determination, the budget agency shall include the following amounts:

(1) Amounts distributed to counties traversed by the Indiana Toll Road under section 6(a)(1) of this chapter.

(2) Money distributed to the northwest Indiana regional development authority under this chapter.

(3) Money distributed under section 6(a)(3) of this chapter.

(4) Projects carried out by the department in counties traversed by the Indiana Toll Road and funded with money distributed under section 6(a)(4) of this chapter.

(5) The amount initially set aside in the administration account of the toll road fund to establish an escrow account to implement a written agreement entered into under IC 8-15.5-7-6 to fund reductions in, or refunds of, user fees imposed on Class 2 vehicles.

(6) Money transferred to the administration account of the toll road fund under section 6(a)(5) of this chapter.

(7) Payments to the public employees' retirement fund required by section 6(a)(6) of this chapter.

SECTION 6. IC 8-14-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 15. Next Generation Trust Fund**

**Sec. 1.** As used in this chapter, "authority" refers to the Indiana finance authority.

**Sec. 2.** As used in this chapter, "trust" refers to the next generation trust fund established under this chapter.

**Sec. 3.** As used in this chapter, "trustee" refers to the trustee of the trust designated under section 7 of this chapter.

**Sec. 4. (a)** The authority shall establish a next generation trust fund to hold title to proceeds transferred to the trust under IC 8-15.5-11 to be used exclusively for the provision of highways, roads, and bridges for the benefit of the people of Indiana and the users of those facilities.

**(b)** The trust shall be established as a charitable trust, separate from the state, but for the benevolent public purpose provided in this section.

**(c)** The trust consists of the proceeds transferred to the trust under IC 8-15.5-11 and any income that accrues from the investment of these proceeds.

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**Sec. 5.** The chairman of the authority shall enter into a trust agreement on behalf of the authority with the treasurer of state in conformity with IC 30-4-2-1. Any provision of the trust agreement entered into under this section that is inconsistent with the provisions or intent of this chapter is void and of no further force or effect.

**Sec. 6.** A trust established under this chapter must be an irrevocable trust and may not be revoked or terminated by the authority or any other person, nor may it be amended or altered by the authority or any other person. However, the terms of the trust must provide that the trust terminates when no funds remain in the trust.

**Sec. 7.** The treasurer of state shall act as the trustee of the trust.

**Sec. 8. (a)** The trustee shall:

- (1) administer and manage the trust;
- (2) invest the money in the trust; and
- (3) deposit in the trust any interest that accrues from the investment of these funds.

(b) Notwithstanding IC 5-13, the trustee shall invest the money in the trust not currently needed to meet the obligations of the trust in the same manner as money is invested by the public employees' retirement fund under IC 5-10.3-5. However, the trustee may not invest the money in the trust in equity securities. The trustee shall also comply with the prudent investor rule set forth in IC 30-4-3.5. The trustee may contract with investment management professionals, investment advisors, and legal counsel to assist in the investment of the trust and may pay the state expenses incurred under those contracts from the trust.

(c) IC 4-9.1-1-8 and IC 4-9.1-1-9 do not apply to a trust established under this chapter.

(d) Money in the trust at the end of a state fiscal year does not revert to the state general fund.

**Sec. 9.** IC 30-4 (trust code) applies to a trust established under this chapter.

**Sec. 10. (a)** The principal of the trust may not be diminished during the term of the trust.

(b) The income that accrues from investment of the trust shall be deposited in the trust.

(c) On March 15, 2011, March 15, 2016, and March 15 every five (5) years thereafter, the treasurer of state shall transfer all interest accruing to the trust to the major moves construction fund.

**Sec. 11.** The report required under IC 30-4-5-12 is a public

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record. The attorney general may petition for an accounting as permitted by IC 30-4-5-12.

**Sec. 12. (a)** This section applies if a person does any of the following with respect to a trust created under this chapter:

- (1) Commits a breach of the trust.
- (2) Violates the mandate of the trust or trust agreement.
- (3) Violates a duty imposed by this chapter, the trust agreement, or IC 30-4.

**(b)** The attorney general may petition a court to impose one (1) or more of the remedies described in IC 30-4-5.5-1.

**Sec. 13.** Any records, files, or documents relating to the trust may be examined by the state board of accounts at a time selected by the state board of accounts. The trustee shall upon request of the state board of accounts:

- (1) produce and submit any records, files, or documents related to the trust; and
- (2) assist in every way the state board of accounts in its work in making an examination.

SECTION 7. IC 8-14-16 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

#### **Chapter 16. Local Major Moves Construction Funds**

**Sec. 1.** This chapter applies only to the following counties:

- (1) A county having a population of more than thirty-three thousand two hundred (33,200) but less than thirty-three thousand six hundred (33,600).
- (2) A county having a population of more than thirty-four thousand nine hundred (34,900) but less than thirty-four thousand nine hundred fifty (34,950).
- (3) A county having a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000).
- (4) A county having a population of more than one hundred eighty-two thousand seven hundred ninety (182,790) but less than two hundred thousand (200,000).
- (5) A county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000).
- (6) A county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000).
- (7) A county having a population of more than four hundred

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thousand (400,000) but less than seven hundred thousand (700,000).

**Sec. 2.** As used in this chapter, "fund" refers to a local major moves construction fund established under section 4 of this chapter.

**Sec. 3.** Money distributed to a county described in section 1 of this chapter from the major moves construction fund under IC 8-14-14-6(a)(3) shall be distributed by the county auditor among the county and each of the cities and towns in the county that is eligible to receive a distribution from the motor vehicle highway account under IC 8-14-1, in the same proportion among the county, cities, and towns as funds are distributed from the motor vehicle highway account under IC 8-14-1.

**Sec. 4. (a)** Each county, city, or town that receives a distribution under section 3 of this chapter shall establish a local major moves construction fund.

**(b)** The fund consists of money distributed to the county, city, or town from the major moves construction fund under section 3 of this chapter.

**(c)** The fiscal officer of the county, city, or town shall administer the fund.

**(d)** Subject to subsection (f), the fiscal body of the county, city, or town may appropriate money in the fund for a purpose described in section 5 of this chapter. The appropriations of money in the fund must be included as a part of the annual budget for the calendar year in accordance with IC 6-1.1-17.

**(e)** Money remaining in the fund at the end of a particular calendar year remains in the fund and does not revert to any other fund.

**(f)** A county fiscal body must consult with the county executive before making an appropriation under this section.

**Sec. 5.** Money in the fund may be expended only for the following purposes:

- (1)** Construction of highways, roads, and bridges.
- (2)** In a county that is a member of the northwest Indiana regional development authority, or in a city or town located in such a county, any purpose for which the regional development authority may make expenditures under IC 36-7.5.
- (3)** Providing funding for economic development projects (as defined in IC 6-3.5-7-13.1(c)(1) or IC 6-3.5-7-13.1(c)(2)(A) through IC 6-3.5-7-13.1(c)(2)(K)).
- (4)** Matching federal grants for a purpose described in this

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section.

**(5) Providing funding for interlocal agreements under IC 36-1-7 for a purpose described in this section.**

**(6) Providing the county's or city's contribution to the northwest Indiana regional development authority, in the case of a county described in section 1(3) of this chapter or a city described in IC 36-7.5-2-3(e).**

SECTION 8. IC 8-15-2-1, AS AMENDED BY P.L.214-2005, SECTION 51, AND AS AMENDED BY P.L.235-2005, SECTION 115, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) In order to remove the handicaps and hazards on the congested highways in Indiana, to facilitate vehicular traffic throughout the state, to promote the agricultural and industrial development of the state, and to provide for the general welfare by the construction of modern express highways embodying safety devices, including center division, ample shoulder widths, long sight distances, multiple lanes in each direction, and grade separations at intersections with other highways and railroads, the authority may:

(1) **subject to subsection (d)**, construct, reconstruct, maintain, repair, and operate toll road projects at such locations as shall be approved by the governor;

(2) in accordance with such alignment and design standards as shall be approved by the authority and subject to IC 8-9.5-8-10, issue toll road revenue bonds of the state payable solely from funds pledged for their payment, as authorized by this chapter, to pay the cost of such projects;

(3) finance, develop, construct, reconstruct, improve, or maintain ~~public improvements such as roads and streets, sewerlines, waterlines, and sidewalks~~ for manufacturing, ~~or~~ commercial, ~~or public transportation~~ activities within a county through which a toll road passes; ~~if these improvements are within the county and are within an area that is located:~~

~~(A) ten (10) miles on either side of the center line of a toll road project; or~~

~~(B) two (2) miles on either side of the center line of any limited access highway that interchanges with a toll road project;~~

(4) in cooperation with the Indiana department of transportation or a political subdivision, construct, reconstruct, or finance the construction or reconstruction of an arterial highway or an arterial street that is located within ~~ten (10) miles of the center line of a county through which a toll road project passes~~ and that:

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- (A) interchanges with a toll road project; or
- (B) intersects with a road or a street that interchanges with a toll road project;

- (5) ~~assist in~~ *finance improvements necessary for developing existing* transportation corridors in northwestern Indiana; and
- (6) exercise these powers in participation with any governmental entity or with any individual, partnership, limited liability company, or corporation.

(b) Notwithstanding subsection (a), the authority shall not construct, maintain, operate, nor contract for the construction, maintenance, or operation of transient lodging facilities on, or adjacent to, such toll road projects.

(c) *This chapter:*

- (1) *applies to the authority only when acting for the purposes set forth in this chapter; and*
- (2) *does not apply to the authority when acting under any other statute for any other purpose.*

**(d) Notwithstanding any other law, neither the authority nor an operator selected under IC 8-15.5 may carry out any of the following activities under this chapter unless the general assembly enacts a statute authorizing that activity:**

- (1) Carrying out construction for Interstate Highway 69 in a township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).**
- (2) Imposing tolls on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

SECTION 9. IC 8-15-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. The authority may do the following:

- (1) Construct, maintain, repair, police, and operate toll road projects (as defined in this chapter), public improvements, and arterial streets and roads under section 1 of this chapter and establish rules for the use of any such toll road project, public improvement, or arterial street or road.
- (2) Issue toll road revenue bonds of the state, payable solely from an allocation of money from the rural transportation road fund under IC 8-9.5-8-16 or from revenues or from the proceeds of bonds issued under this chapter and earnings thereon, or from all three (3),

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for the purpose of paying all or any part of the cost of any one (1) or more toll road projects or for the purpose of refunding any other toll road revenue bonds.

(3) Establish reserves from the proceeds of the sale of bonds or from other funds, or both, to secure the payment of the bonds.

(4) Fix and revise from time to time and charge and collect tolls for transit over each toll road project constructed by it.

(5) Acquire in the name of the state by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, or by the exercise of the right of condemnation in the manner as provided by this chapter, such public or private lands, including public parks, playgrounds or reservations, or parts thereof or rights therein, rights-of-way, property, rights, easements, and interests, as it may deem necessary for carrying out the provisions of this chapter. The authority may also:

(A) sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, whether by purchase, condemnation, or otherwise, and whether such land or interest therein had been public or private, when the same shall no longer be needed for such purposes; and

(B) transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any toll road project, or as otherwise required under the provisions of this chapter **to a state agency or political subdivision.**

(6) Designate the locations and establish, limit, and control such points of ingress to and egress from each toll road project as may be necessary or desirable in the judgment of the authority to ensure the proper operation and maintenance of such projects, and to prohibit entrance to such project from any point not so designated. The authority shall not grant, for the operation of transient lodging facilities, either ingress to or egress from any project, including the service areas thereof on which are located service stations and restaurants, and including toll plazas and paved portions of the right-of-way. The authority shall cause to be erected, at its cost, at all points of ingress and egress, large and suitable signs facing traffic from each direction on the toll road. Such signs shall designate the number and other designations, if any, of all United States or state highways of ingress or egress, the names of all Indiana municipalities with a population of five thousand (5,000) or more within a distance of seventy-five (75) miles on such roads of ingress or egress, and the distance in miles to such designated

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municipalities.

(7) Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, ~~or~~ IC 8-9.5-8, **or IC 8-15.5**. When the cost under any such contract or agreement, other than:

(A) a contract for compensation for personal services;

(B) a contract with the department under IC 8-9.5-8-7; ~~or~~

(C) a lease with the department under IC 8-9.5-8-8; **or**

**(D) a contract, a lease, or another agreement under IC 8-15.5;** involves an expenditure of more than ten thousand dollars (\$10,000), the authority shall make a written contract with the lowest and best bidder after advertisement for not less than two (2) consecutive weeks in a newspaper of general circulation in Marion County, Indiana, and in such other publications as the authority shall determine. Such notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. Each bid shall contain the full name of every person or company interested in it and shall be accompanied by a sufficient bond or certified check on a solvent bank that if the bid is accepted a contract will be entered into and the performance of its proposal secured. The authority may reject any and all bids. A bond with good and sufficient surety shall be required by the authority of all contractors in an amount equal to at least fifty percent (50%) of the contract price, conditioned upon the faithful performance of the contract.

(8) Employ consulting engineers, superintendents, managers, and such other engineers, construction and accounting experts, bond counsel, other attorneys with the approval of the attorney general, and other employees and agents as may be necessary in its judgment to carry out the provisions of this chapter, and to fix their compensation. However, all such expenses shall be payable solely from the proceeds of toll road revenue bonds issued under the provisions of this chapter or from revenues.

(9) Receive and accept from any federal agency, subject to IC 8-23-3, grants for or in aid of the construction of any toll road project, and receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made, and repay any grant to the authority or to the department from a federal agency if such repayment is necessary to free the authority from restrictions which the authority

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determines to be in the public interest to remove.

(10) Establish fees, charges, terms, or conditions for any expenditures, loans, or other form of financial participation in projects authorized as public improvements on arterial streets and roads under section 1 of this chapter.

(11) Accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source and agree to and comply with conditions attached to the aid.

(12) Accept transfer of a state highway to the authority under IC 8-23-7-23 and pay the cost of conversion of the state highway to a toll road project.

(13) Enter into contracts or leases with the department under IC 8-9.5-8-7 or IC 8-9.5-8-8 and in connection with the contracts or leases agree with the department for coordination of the operation and the repair and maintenance of toll road projects and tollways which are contiguous parts of the same public road, including joint toll collection facilities and equitable division of tolls.

**(14) Enter into public-private agreements under IC 8-15.5 and do all acts and things necessary or proper to carry out the purposes set forth in IC 8-15.5.**

~~(14)~~ **(15)** Do all acts and things necessary or proper to carry out this chapter.

SECTION 10. IC 8-15-2-5.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 5.2. The authority may not sell, convey, or mortgage a toll road project.**

SECTION 11. IC 8-15-2-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) The authority may:

(1) fix, revise, charge, and collect tolls for the use of each toll road project by any person, partnership, association, limited liability company, or corporation desiring the use of any part thereof, including the right-of-way adjoining the paved portion and for placing thereon telephone, telegraph, electric light, or power lines; ~~and~~

(2) fix the terms, conditions, and rates of charge for such use, **including assessments for the failure to pay required tolls**, subject, however, to the state's police power; **and**

**(3) collect tolls, user fees, or other charges through manual or nonmanual methods, including, but not limited to, automatic vehicle identification systems, electronic toll collection systems,**

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**and, to the extent permitted by law, including rules adopted by the authority under IC 8-15-2-17.2(a)(10), global positioning systems and photo or video based toll collection or toll collection enforcement systems.**

(b) Notwithstanding subsection (a), no toll or charge shall be made by the authority **under this section or under a public-private agreement entered into under IC 8-15.5** for:

(1) the operation of temporary lodging facilities located upon or adjacent to any project, nor may the authority itself operate or gratuitously permit the operation of such temporary lodging facilities by other persons without any toll or charge; or

(2) placing in, on, along, over, or under such project, such telephone, telegraph, electric light or power lines, equipment, or facilities as may be necessary to serve establishments located on the project or as may be necessary to interconnect any public utility facilities on one (1) side of the toll road project with those on the other side.

(c) All contracts executed by the authority shall be preserved in the principal office of the authority.

(d) In the case of a toll road project that is not leased to the department under IC 8-9.5-8-7, the tolls shall be fixed and adjusted for each toll road project so that the aggregate of the tolls from the project, together with other revenues that are available to the authority without prior restriction or encumbrance, will at least be adequate to pay:

(1) the cost of operating, maintaining, and repairing the toll road project, including major repairs, replacements, and improvements;

(2) the principal of and the interest on bonds issued in connection with the toll road project, as the principal and interest becomes due and payable, including any reserve or sinking fund required for the project; and

(3) the payment of principal of and interest on toll road bonds issued by the authority in connection with any other toll road project, including any reserve or sinking fund required for the project, but only to the extent that the authority provides by resolution and subject to the provisions of any trust agreement relating to the project.

(e) Not less than one (1) year before the date that final payment of all such bonds, interest, and reimbursement is expected by the chairman of the authority to be completed, the chairman shall notify the state budget committee in writing of the expected date of final payment.

(f) Such tolls shall not be subject to supervision or regulation by any other commission, board, bureau, or agency of the state.

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(g) The tolls, rents, and all other revenues derived by the authority from the toll road project, **except those received in accordance with a public-private agreement under IC 8-15.5**, shall be used as follows:

(1) To pay the cost of operating, maintaining, and repairing the toll road project, including major repairs, replacements, and improvements, to the extent that those costs are not paid out of other funds.

(2) To the extent provided for in the resolution authorizing the issuance of bonds under this chapter or in the trust agreement securing the bonds, to pay:

(A) the principal of and interest on any bonds as the principal and interest become due; or

(B) the redemption price or purchase price of the bonds retired by call or purchase.

(3) Except as prohibited by the resolution authorizing the issuance of bonds under this chapter or the trust agreement securing them, for any purpose relating to any toll road project, including the subject toll road project, as the authority provides by resolution.

(h) Neither the resolution nor any trust agreement by which a pledge is created needs to be filed or recorded except in the records of the authority.

(i) The use and disposition of moneys to the credit of any sinking fund shall be subject to the provisions of any resolution or resolutions authorizing the issuance of any bonds or of any trust agreement. Except as may otherwise be provided in this chapter or in any resolution or any trust agreement, any sinking fund shall be a fund for all bonds without distinction or priority of one over another, subject, however, to such priorities as may arise from prior pledges.

(j) In the case of a toll road project that is leased to the department under IC 8-9.5-8-8, the lease must require that the department fix tolls for the toll road project that comply with IC 8-9.5-8-8(c)(6).

**(k) User fees (as defined in IC 8-15.5-2-10) for a toll road project that is subject to a public-private agreement under IC 8-15.5 shall be set in accordance with IC 8-15.5-7.**

SECTION 12. IC 8-15-2-14.5, AS AMENDED BY P.L.214-2005, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14.5. **(a)** Subject to the provisions and requirements of any trust agreement providing for the issuance of toll road revenue bonds and only to the extent permitted by such trust agreement, the authority shall fix the tolls for any toll road under its jurisdiction.

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**(b) Subsection (a) does not apply to tolls fixed, authorized, or established in accordance with a public-private agreement under IC 8-15.5.**

SECTION 13. IC 8-15-2-14.7, AS ADDED BY P.L.214-2005, SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14.7. (a) As used in this section, "development authority" refers to the development authority established under IC 36-7.5-2-1.

(b) Subject to the trust agreement of any outstanding bonds and subject to the requirements of subsection (d), the authority shall distribute to the development authority in calendar year 2006 and calendar year 2007 from revenues accruing to the authority from the toll road at least five million dollars (\$5,000,000) and not more than ten million dollars (\$10,000,000) each year. The amount of the distribution for a year shall be determined by the authority. The amount to be distributed each year shall be distributed in equal quarterly amounts before the last business day of January, April, July, and October of 2006 and 2007. The amounts distributed under this subsection shall be deposited in the development authority fund established under ~~IC 36-7.5-4-1.~~

(c) Subject to the trust agreement of any outstanding bonds and subject to the requirements of subsections (d) and (e), after 2007, the authority may distribute to the development authority amounts from revenues accruing to the authority from the toll road. The amount of any distribution for a year shall be determined by the authority. Any amounts to be distributed for the year under this subsection shall be distributed in equal quarterly amounts before the last business day of January, April, July, and October of the year. Any amounts distributed under this subsection shall be deposited in the development authority fund established under ~~IC 36-7.5-4-1.~~

(d) A distribution may be made by the authority **(b) An appropriation made by the general assembly to the development authority under subsection (b) or (c) may be distributed to the development authority** only if all transfers required from cities and counties to the development authority under IC 36-7.5-4-2 have been made.

(e) A distribution may be made by the authority **(c) An appropriation made by the general assembly to the development authority may be distributed** to the development authority under subsection (c) only after:

- (1) the budget committee has reviewed; the development authority's comprehensive strategic development plan under ~~IC 36-7.5-3-4~~ and

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(2) the director of the office of management and budget has approved;  
the comprehensive strategic development plan **submitted in accordance with IC 36-7.5-3-4.**

~~(f)~~ (d) If the Indiana Toll Road is sold or leased before January 1, 2008 (other than a lease to the department), and the sale or lease agreement does not require the purchaser or lessee to continue making the distributions required by subsection (b), the treasurer of state shall pay an amount equal to the greater of zero (0) or the result of:

(1) twenty million dollars (\$20,000,000); minus

(2) any amounts transferred to the development authority under this subsection before the sale or lease;

from the state general fund the amount, if any, appropriated by the general assembly to the development authority fund established under IC 36-7.5-4-1.

~~(g)~~ (e) Amounts distributed or paid to the development authority under this section may be used for any purpose of the development authorized under IC 36-7.5.

~~(h)~~ The amounts necessary to make any distributions or payments required or authorized by this section are appropriated:

SECTION 14. IC 8-15-2-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds, to be held and applied solely as provided in this chapter. Such funds shall be kept in depositories as selected by the authority and may be invested until expended, all as provided by law.

(b) The resolution authorizing the issuance of bonds of any issue or the trust agreement securing such bonds shall provide that any officer to whom, or any bank or trust company to which, such moneys shall be paid shall:

(1) act as trustee of such moneys; and

(2) hold and apply the same for the purposes of this chapter, subject to such regulations as this chapter and such resolution or trust agreement may provide.

**(c) This section does not apply to money paid or received with respect to a toll road project that is the subject of a public-private agreement under IC 8-15.5.**

SECTION 15. IC 8-15-2-17.2, AS AMENDED BY P.L.151-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17.2. (a) Notwithstanding IC 9, the authority may adopt rules:

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(1) Establishing weight and size limitations for vehicles using a toll road project, subject to the following:

(A) The operator of any vehicle exceeding any of the maximum allowable dimensions or weights as set out by the authority in rules and regulations shall apply to the authority in writing, for an application for a special hauling permit, which application must be in compliance with all the terms thereof, and which application must be received at least seven (7) days prior to the time of permitted entry should such permit be granted. Such permit, if granted, will be returned to the applicant in duplicate, properly completed and numbered, and the driver of the vehicle shall have a copy to present to the toll attendant on duty at the point of entry.

(B) The authority shall assess a fee for issuing a special hauling permit. In assessing the fee, the authority shall take into consideration the following factors:

(i) The administrative cost of issuing the permit.

(ii) The potential damage the vehicle represents to the project.

(iii) The potential safety hazard the vehicle represents.

(2) Establishing the minimum speed that a motor vehicle may be driven on the interstate defense network of dual highways.

(3) Designating one-way traffic lanes on a toll road project.

(4) Determining the manner of operation of motor vehicles entering and leaving traffic lanes on a toll road project.

(5) Determining the regulation of U-turns, of crossing or entering medians, of stopping, parking, or standing, and of passing motor vehicles on a toll road project.

(6) Determining the establishment and enforcement of traffic control signs and signals for motor vehicles in traffic lanes, acceleration and deceleration lanes, toll plazas, and interchanges on a toll road project.

(7) Determining the limitation of entry to and exit from a toll road project to designated entrances and exits.

(8) Determining the limitation on use of a toll road project by pedestrians and aircraft and by vehicles of a type specified in such rules and regulations.

(9) Regulating commercial activity on a toll road project, including but not limited to:

(A) the offering or display of goods or services for sale;

(B) the posting, distributing, or displaying of signs, advertisements, or other printed or written material; and

(C) the operation of a mobile or stationary public address system.

**(10) Establishing enforcement procedures and making**

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**assessments for the failure to pay required tolls.**

(b) A person who violates a rule adopted under this section commits a Class C infraction. However, a violation of a weight limitation established by the authority under this section is:

(1) a Class B infraction if the total of all excesses of weight under those limitations is more than five thousand (5,000) pounds but not more than ten thousand (10,000) pounds; and

(2) a Class A infraction if the total of all excesses of weight under those limitations is more than ten thousand (10,000) pounds.

(c) It is a defense to the charge of violating a weight limitation established by the authority under this section that the total of all excesses of weight under those limitations is less than one thousand (1,000) pounds.

(d) The court may suspend the registration of a vehicle that violated:

(1) a size or weight limitation established by the authority under this section; **or**

(2) **a rule adopted under subsection (a)(10);**

for a period of not more than ninety (90) days.

(e) Upon the conviction of a person for a violation of a weight or size limitation established by the authority under this section, the court may recommend suspension of the person's current chauffeur's license only if the violation was committed knowingly.

SECTION 16. IC 8-15-2-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. (a) The authority may, after adopting a resolution and after receiving the governor's approval, at any time determine under IC 8-23-7 that a toll road project constructed or operated by the authority, **other than a toll road project that is subject to a public-private agreement under IC 8-15.5**, should become a part of the system of state highways free of tolls or become a tollway under IC 8-15-3.

(b) Any resolution as to any project described in subsection (a) shall not become effective until all bonds to which the revenues of any project were pledged for payment, together with all interest thereon, is paid, or a sufficient amount for the payment of all bonds and the interest thereon to maturity is set aside in trust for the benefit of bondholders.

(c) Until any resolution is adopted by the authority under subsection (a) and becomes effective as provided in subsection (b), **and subject to the terms of any public-private agreement under IC 8-15.5**, any project constructed by the authority or its predecessors remains under the jurisdiction of the authority and the authority shall continue to maintain and operate the project and levy and collect tolls as provided

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in this chapter. Subject to any agreement entered into by the Secretary of Commerce of the United States, acting by and through the federal highway administrator; the Indiana toll road commission; and the state, acting by and through the Indiana department of transportation; Tolls on any project may be continued after the date of the payment of the principal of and interest on bonds issued for the construction of that project.

SECTION 17. IC 8-15-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 27. **(a) Except as provided in subsection (b), and** notwithstanding any other provision of this chapter, funds generated by tolls or any other means from a toll road project that was in existence and in use on or before January 1, 1986, shall be used exclusively for purposes that are authorized and described in this chapter.

**(b) If the authority enters into a public-private agreement with respect to a toll road project under IC 8-15.5, funds generated by tolls or any other means from that project shall be used as provided in IC 8-15.5.**

SECTION 18. IC 8-15-2-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 28. **If the authority is a party to a public-private agreement under IC 8-15.5, the authority may authorize the operator under that agreement to exercise any or all of the powers specified in sections 1, 6, 18, and 24 of this chapter, subject to the terms of that agreement.**

SECTION 19. IC 8-15-2-29 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 29. **A United States flag shall be displayed at the primary administrative building of the Indiana Toll Road.**

SECTION 20. IC 8-15-3-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. **"Operator" refers to one (1) or more private individuals or entities that enter into a public-private agreement to do one (1) or more of the following with respect to one (1) or more tollways:**

- (1) Planning.**
- (2) Design.**
- (3) Development.**
- (4) Construction.**
- (5) Reconstruction.**
- (6) Maintenance.**
- (7) Repair.**

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**(8) Financing.****(9) Operation.**

**A public entity may provide services to an operator as a subcontractor or subconsultant without affecting the private status of the operator and the entity's or operator's ability to enter into a public-private agreement.**

SECTION 21. IC 8-15-3-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3.5. "Public-private agreement" has the meaning set forth in IC 8-15.7-2-15.**

SECTION 22. IC 8-15-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. As used in this chapter, "tollway" means includes any combination or part of:**

**(1) an express highway, superhighway, bridge, tunnel, or motor way, including express lanes and managed lanes, constructed under this chapter or IC 8-15.7 or, subject to section 10 of this chapter, converted to a tollway under IC 8-23-7-22; The term includes**

**(2) any bridge, tunnel, overpass, underpass, interchange, structure, ramp, access road, service road, entrance plaza, approach, tollhouse, utility corridor, toll gantry, rest stop, service station, or administration, storage, or other buildings or facilities, including temporary facilities and buildings, facilities, and structures that will not be tolled, that the department considers appurtenant to or necessary or desirable for the financing, construction, operation, of the tollway. The term also includes or maintenance of one (1) or more of the items described in subdivision (1); and**

**(3) any subsequent improvement, betterment, enlargement, extension, or reconstruction of a tollway; including any section; which is one (1) or more items described in this section, including any nontolled part, that are separately designated by name or number.**

SECTION 23. IC 8-15-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 9. (a) Subject to subsection (e), the governor must approve the location of any tollway.**

**(b) The department may, in any combination, plan, design, develop, construct, reconstruct, maintain, repair, police, finance, and operate tollways, public improvements, and arterial streets and roads at those locations that the governor approves.**

**(c) The department may, in any combination, plan, design, develop, construct, reconstruct, improve, finance, operate, repair, or maintain public improvements such as roads and streets, sewer lines, and water**

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lines, **and other utilities** if these improvements are:

- (1) adjacent **or appurtenant** to a tollway; **or**
- (2) **necessary or desirable for the financing, construction, operation, or maintenance of a tollway.**

(d) The department may, **in any combination, plan, design, develop,** construct, reconstruct, **or improve, maintain, repair, operate, or** finance the construction or reconstruction of an arterial highway or an arterial street that:

- (1) **is adjacent to, appurtenant to, or** interchanges with a tollway; **or**

- (2) intersects with a road or street that interchanges with a tollway.

(e) **Notwithstanding any other law, the governor, the department, or an operator may not carry out any of the following activities under this chapter unless the general assembly enacts a statute authorizing that activity:**

- (1) **Approve the location of a tollway, other than Interstate Highway 69 between Interstate Highway 64 and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

- (2) **Carry out construction for Interstate Highway 69 in a township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).**

- (3) **Impose tolls on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

SECTION 24. IC 8-15-3-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The department may fix, revise, charge, ~~and~~ collect, **retain, and use** tolls for transit over each tollway ~~the department constructs or converts from a state highway to a tollway under IC 8-23-7-22; or part of a tollway.~~ **The tolls and the setting of toll rates are not subject to supervision or regulation by any other commission, board, bureau, or agency of the state.**

SECTION 25. IC 8-15-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. The department may transfer to the tollway **or lease, license, or otherwise transfer to the authority or the operator of a tollway** any real property or interest in real property acquired by it under **section 13 or 31 of this chapter,** IC 8-23-7, or otherwise that is necessary, **desirable,** or

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convenient for the **financing**, construction, **maintenance**, and operation of any tollway **or part of a tollway**, or as otherwise required under this chapter.

SECTION 26. IC 8-15-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Except as provided in subsection (b), the department may designate the locations and establish, limit, and control points of ingress and egress from each tollway as necessary or desirable to:

- (1) ensure the proper operation and maintenance of the tollway;
- (2) finance the tollway;**
- ~~(2)~~ **(3)** prohibit entrance to the tollway from any point that is not designated as an entrance; and
- ~~(3)~~ **(4)** provide for and permit the interconnection of a tollway with a toll road that is leased or operated by the department.

(b) The department may not grant ingress to or egress from any tollway, service area, or toll collection area having direct access to the tollway for the operation of transient lodging facilities, including the service areas on which are located service stations and restaurants and toll plazas and paved parts of the right-of-way.

(c) The department shall erect ~~at its cost~~, at all points of ingress and egress ~~large and~~ suitable signs facing traffic from each direction on the tollway. These signs must designate the number and other designations, if any, of all United States or state highways of ingress or egress, the names of all Indiana municipalities having a population of at least five thousand (5,000) within a distance of seventy-five (75) miles on the roads of ingress or egress, and the distance in miles to those designated municipalities.

SECTION 27. IC 8-15-3-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. The department may make and enter into all **leases, licenses, conveyances**, contracts, and agreements necessary or incidental to the performance of the department's duties and the execution of the department's powers under this chapter **and IC 8-15.7**.

SECTION 28. IC 8-15-3-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The department may employ consulting engineers, superintendents, managers, other engineers, construction ~~and experts, financial advisers~~, accounting experts, attorneys, ~~(with the approval of the attorney general)~~, and other **consultants, contractors**, employees, and agents necessary to carry out this chapter **or IC 8-15.7**, and fix their compensation.

SECTION 29. IC 8-15-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. The department

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may receive and accept **in any combination** from any federal, **state, or local** agency, subject to ~~IC 8-9.5-6-1~~, **IC 8-23-3, loan proceeds, proceeds from lines of credit, proceeds from credit guarantees, and grants for or in aid of the planning, design, construction, financing, repair, rehabilitation, expansion, improvement, operation, or maintenance of all or part of any tollway, and receive and accept aid or contributions from any source of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which those loan proceeds, proceeds from lines of credit, proceeds from credit guarantees, grants, or contributions are made. The department may distribute any part of loan proceeds, proceeds from lines of credit, proceeds from credit guarantees, and grants received under this section to an operator as permitted by the terms of the loan, line of credit, credit guarantee, or grant. The department, the authority, or an operator, as required by a public-private agreement, shall repay any loan, line of credit, credit guarantee, or grant from a federal, state, or local agency, if a repayment is necessary to free the department from restrictions that the department determines to be in the public interest to remove.**

SECTION 30. IC 8-15-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. The department may accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, and any other financing and assistance from any source and agree to and comply with conditions attached to it. **Subject to the conditions agreed to by the department, the department may distribute any gifts, devises, bequests, grants, loans, appropriations, revenue sharing, and any other financing and assistance received under this section to an operator, as set forth in a public-private agreement.**

SECTION 31. IC 8-15-3-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The exercise of the powers granted by this chapter **to the department or the authority** must be in all respects for:

- (1) the benefit of the people of Indiana;
- (2) the increase of the commerce and prosperity of Indiana; and
- (3) the improvement of the health and living conditions of the people of Indiana.

(b) Since the operation and maintenance of a tollway by the department **or the authority** constitutes the performance of essential governmental functions, **neither** the department **nor the authority** is ~~not~~ required to pay any taxes or assessments upon a tollway or any property acquired or used by the department under this chapter **or**

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IC 8-15.7 or upon the income from a tollway.

(c) The operator under a public-private agreement is not required to pay taxes or assessments upon a tollway, any property or property interest acquired by the operator under a public-private agreement, or any possessory interest in the tollway or in property granted or created by the public-private agreement under this chapter or IC 8-15.7.

(d) An operator or any other person purchasing tangible personal property for incorporation into or improvement of a structure or facility constituting or becoming part of the land included in:

- (1) a tollway; or
- (2) property granted or created by the public-private agreement;

is entitled to the exemption from gross retail tax and use tax provided under IC 6-2.5-4-9(b) and IC 6-2.5-3-2(c), respectively, with respect to that tangible personal property.

SECTION 32. IC 8-15-3-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. (a) Except as provided in subsection (b), the department may:

- (1) fix, revise, charge, and collect tolls, **fees, or charges** for:
  - (A) the use of a tollway or any part of a tollway, including the right-of-way adjoining the paved part of the tollway; ~~and~~
  - (B) placing on a tollway or part of a tollway telephone, telegraph, electric light, **cable, communication, gas, water, sewer,** or power lines; ~~and~~
  - (C) the initiation, administration, and maintenance of customer accounts, late payment procedures, credit card and other electronic transactions, and enforcement actions for collection of unpaid amounts; and
  - (D) equipment used by customers in connection with electronic tolling, including transponders;
- (2) fix the terms, conditions, and rates of charge for use of a tollway; ~~and~~
- (3) **retain and use tolls, fees, or charges collected in accordance with this article.**

(b) A toll or charge may not be made by the department for the following:

- (1) The operation of temporary lodging facilities located upon or adjacent to a tollway.
- (2) Placing in, on, along, over, or under a tollway any telephone, telegraph, electric light, **cable, communication, gas, water, sewer,**

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or power lines, equipment, or facilities that are necessary to serve establishments located on the tollway or that are necessary to interconnect any public utility facilities on one (1) side of the tollway with those on the other side.

(c) Tollway tolls that are collected shall be deposited in a special fund so that the tolls from each tollway project may be accounted for and used only for the purposes of operating and maintaining the facility from which the tolls were collected.

(d) (c) The department shall **may** fix the tolls for a tollway so that, to the extent feasible, the tolls for any class of traffic are substantially uniform according to the mileage between interchanges. A reduced rate of toll is not allowed within a class except through the use of commutation or other tickets or privileges based upon frequency or volume of use. **by establishing maximum amounts and may provide that tolls or any maximum tolls established, and any increases or decreases to those tolls or maximum tolls, may be based on the indices or methodologies that the department considers appropriate. The department may set an increased toll for any class of traffic for any lane or other part of a tollway if the department determines that an increased toll is necessary or appropriate for financing the tollway or to reduce traffic congestion, increase mobility, improve connectivity, promote fuel conservation, achieve operating efficiencies, or promote public safety. The department shall specify the times or conditions under which an increased toll will be imposed. A reduced rate of toll is not allowed within a class, except:**

- (1) through the use of commutation or other tickets or privileges based upon frequency or volume of use;
- (2) as permitted under an electronic tolling program;
- (3) as permitted under a managed lane program under section 27.5 of this chapter;
- (4) as necessary, desirable, or appropriate for financing the tollway;
- (5) on a part of a tollway designated by the department, in its discretion, as an area free of tolls;
- (6) as determined appropriate by the department; or
- (7) as permitted under a public-private agreement.

(d) A person that passes a toll gate or other area of a tollway where a toll, charge, or fee is due without paying that amount commits a Class C infraction.

SECTION 33. IC 8-15-3-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 26. (a) The

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department may adopt rules under IC 4-22-2 for the following:

- (1) The control and regulation of traffic on a tollway.
- (2) The protection and preservation of property under the department's **or operator's** jurisdiction and control.
- (3) The maintenance and preservation of good order within the property under the department's **or operator's** control.
- (b) Rules adopted under this chapter must provide that law enforcement officers be afforded ready access, while in the performance of their official duties, to all property under the department's jurisdiction without the payment of tolls.

**(c) A person who violates a rule adopted under this section commits a Class C infraction.**

SECTION 34. IC 8-15-3-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 27.5. (a) The rules adopted under section 26 or 27 of this chapter may include restrictions on the use of one (1) or more lanes on any part of a tollway as necessary, appropriate, or desirable for financing the tollway or to reduce congestion, increase mobility, promote fuel conservation, achieve operating efficiencies, or promote public safety. The restrictions may include limiting use of one (1) or more lanes to private vehicles, high occupancy vehicles, vehicles that participate in an electronic tolling program, trucks, commercial vehicles, special fuel vehicles, transit vehicles, or vehicles that pay a higher toll for exclusive use of a dedicated lane. The rules may require a person eligible to use a restricted lane to obtain the permit specified by the department or an operator, as permitted under a public-private agreement.**

**(b) The department may require that an electronic device or other identification device specified by the department or by an operator as permitted under a public-private agreement be maintained in a vehicle using a restricted lane on a tollway.**

**(c) The department may construct barriers or implement other design, construction, or operational features to implement a managed lane, express lane, or other program under this section.**

SECTION 35. IC 8-15-3-27.7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 27.7. (a) The rules adopted under section 26 or 27 of this chapter may establish an electronic tolling program. The rules must provide at least the following:**

- (1) A participant must enter into a written agreement containing the terms and conditions approved by the**

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department.

(2) An agreement must require the participant to do the following:

(A) Establish the account specified by the department and maintain the balance of funds in the account specified by the department.

(B) Hold and use any device provided to register use of a tollway that is chargeable to the participant's account in the manner specified in the rules and participant's agreement.

(C) Pay the fees, charges, and tolls specified by the department or an operator, as permitted under a public-private agreement.

(D) Comply with any other necessary or appropriate terms and conditions specified by the department or an operator, as permitted under a public-private agreement.

(3) A method for resolving disputed charges with account holders, including an agreement by the account holder to hold the department and its agents harmless for the payment of any unpaid financial obligation incurred by the account holder.

(4) The program will comply with all applicable federal and state laws, regulations, and rules regulating credit transactions between the entity holding the account and the account holder.

(5) Notice will be provided to the participant of all federal and state privacy, credit, and other laws, regulations, and policies applicable to an account and the program.

(b) The department may establish reasonable fees and charges to be charged to account holders and business entities participating in the electronic tolling program and to recover costs of administration, account initiation and maintenance, late payments, credit card and other electronic transactions, enforcement, and improvement of the program. The fees and charges shall be deposited in the appropriate special funds account for the tollways covered by the program, as specified by the department, or used, retained, or deposited as permitted under a public-private agreement.

(c) The identifying credit and tollway use information of an electronic tolling program participant may not be used by the department or an operator for commercial purposes not related to the tollway.

SECTION 36. IC 8-15-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 32. **Subject to any public-private agreement that applies to a tollway, including terms**

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**applicable to the financing of the tollway**, the department may, after issuing an order and after receiving the governor's approval, at any time determine that a tollway under its jurisdiction should become a part of the system of state highways free of tolls.

SECTION 37. IC 8-15-3-34 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 34. The department may arrange for the use and employment of police officers to police a tollway. The police officers employed under this section are vested with all necessary police powers to enforce state laws. A police officer employed under this section has the same powers within the property limits of a tollway as a law enforcement officer (as defined in IC 35-41-1-17) within the law enforcement officer's jurisdiction. A warrant of arrest issued by the proper authority of the state may be executed within the property limits of the tollway by a police officer employed by the department or an operator.**

SECTION 38. IC 8-15-3-35 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 35. (a) If a public-private agreement is entered into under IC 8-15.7 with respect to a project, the department may authorize:**

- (1) the authority to exercise all or a part of the powers of the department under this chapter necessary or desirable to accomplish the purposes of this chapter or IC 8-15.7; and**
- (2) the operator under the public-private agreement to exercise all or a part of the powers of the department under sections 9, 16, 29, and 30 of this chapter under the public-private agreement.**

**(b) The department may authorize the authority to exercise all or a part of the powers of the department under this chapter necessary or desirable to accomplish the purposes of this chapter.**

SECTION 39. IC 8-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW ARTICLE TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]:

## **ARTICLE 15.5. PUBLIC-PRIVATE AGREEMENTS FOR TOLL ROAD PROJECTS**

### **Chapter 1. General Provisions**

**Sec. 1. The powers conferred by this article are in addition and supplemental to the powers conferred by any other law. If any other law or rule is inconsistent with this article, this article is controlling as to any public-private agreement entered into under this article.**

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**Sec. 2. (a) This article contains full and complete authority for public-private agreements between the authority and a private entity. Except as provided in this article, no law, procedure, proceeding, publication, notice, consent, approval, order, or act by the authority or any other officer, department, agency, or instrumentality of the state or any political subdivision is required for the authority to enter into a public-private agreement with a private entity under this article, or for a toll road project that is the subject of a public-private agreement to be constructed, acquired, maintained, repaired, operated, financed, transferred, or conveyed.**

**(b) Notwithstanding any other law, after August 1, 2006, neither the authority nor the department may:**

- (1) issue a request for proposals for; or**
- (2) enter into;**

**a public-private agreement under this article that would authorize an operator to impose tolls for the operation of motor vehicles on all or part of a project, unless the general assembly adopts a statute authorizing the imposition of tolls.**

**(c) Notwithstanding any other law, neither the authority nor an operator may carry out any of the following activities under this article unless the general assembly enacts a statute authorizing that activity:**

- (1) Carrying out construction for Interstate Highway 69 in a township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).**
- (2) Imposing tolls on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

**Sec. 3. The general assembly finds and determines that:**

- (1) the state has limited resources to fund the maintenance and expansion of the state transportation system, including toll roads, and therefore alternative funding sources should be developed to supplement public revenue sources;**
- (2) the Indiana finance authority should be authorized to solicit, evaluate, negotiate, and administer agreements with the private sector for the purposes described in subdivision (1); and**
- (3) it is necessary to serve the public interest and to provide for the public welfare by adopting this article for the purposes described in this article.**

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## **Chapter 2. Definitions**

**Sec. 1.** The definitions in this chapter apply throughout this article.

**Sec. 2.** "Authority" refers to the Indiana finance authority.

**Sec. 3.** "Department" refers to the Indiana department of transportation.

**Sec. 4.** "Offeror" means a private entity that has submitted a proposal for a public-private agreement under this article.

**Sec. 5.** "Operator" means a private entity that has entered into a public-private agreement with the authority.

**Sec. 6.** "Private entity" means any individual, sole proprietorship, corporation, limited liability company, joint venture, general partnership, limited partnership, nonprofit entity, or other private legal entity. A public agency may provide services to a private entity without affecting the private status of the private entity and the ability to enter into a public-private agreement.

**Sec. 7.** "Project" or "toll road project" has the meaning set forth in IC 8-15-2-4(4).

**Sec. 8.** "Public-private agreement" means an agreement under this article between a private entity and the authority under which the private entity, acting on behalf of the authority as lessee, licensee, or franchisee, will plan, design, acquire, construct, reconstruct, improve, extend, expand, lease, operate, repair, manage, maintain, or finance a toll road project.

**Sec. 9.** "Request for proposals" means all materials and documents prepared by or on behalf of the authority to solicit proposals from offerors to enter into a public-private agreement.

**Sec. 10.** "User fees" means the rates, tolls, or fees imposed for the use of, or incidental to, all or any part of a toll road project under a public-private agreement.

## **Chapter 3. Authority to Enter Into Public-Private Agreements**

**Sec. 1.** Subject to the other provisions of this article, the authority and a private entity may enter into a public-private agreement with respect to a toll road project. Subject to the requirements of this article, a public-private agreement may provide that the private entity is partially or entirely responsible for any combination of the following activities with respect to the project:

- (1) Planning.
- (2) Design.
- (3) Acquisition.
- (4) Construction.

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- (5) Reconstruction.
- (6) Improvement.
- (7) Extension or expansion.
- (8) Operation.
- (9) Repair.
- (10) Management.
- (11) Maintenance.
- (12) Financing.

#### **Chapter 4. Selection of Operator by Request for Proposals**

**Sec. 1.** Before entering into a public-private agreement under this article, the authority must issue a request for proposals as set forth in this chapter. A request for proposals for a toll road project may be issued by the authority in one (1) or more phases and may include a request for qualifications.

**Sec. 2.** A request for proposals issued by the authority must include the following:

- (1) The factors or criteria that will be used in evaluating the proposals.
- (2) A statement that a proposal must be accompanied by evidence of financial responsibility as considered appropriate and satisfactory by the authority.
- (3) A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.
- (4) A statement concerning any other information that the authority may consider in evaluating the proposals.
- (5) A statement that, except as otherwise required by law or under order from a court with jurisdiction, the authority may not disclose the contents of proposals during:
  - (A) discussions; or
  - (B) negotiations;
 with eligible offerors to other eligible offerors.

**Sec. 3.** Notice of a request for proposals shall be given by publication in accordance with IC 5-3-1.

**Sec. 4.** As provided in a request for proposals, discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements.

**Sec. 5.** Eligible offerors must be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals.

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**Sec. 6. (a) The authority may not disclose the contents of proposals during discussions or negotiations with eligible offerors.**

**(b) The authority may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the authority and eligible offerors if those records are created while discussions or negotiations are in progress.**

**(c) Notwithstanding subsections (a) and (b), and with the exception of parts that are confidential under IC 5-14-3, the terms of the selected offer negotiated under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.**

**(d) When disclosing the terms of the selected offer under subsection (c), the authority shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.**

**Sec. 7. (a) The authority shall negotiate with one (1) or more responsible offerors who submit proposals that are determined to be reasonably capable of being selected for a public-private agreement and may seek to obtain a final offer from one (1) or more responsible offerors.**

**(b) In determining whether one (1) or more responsible offerors are reasonably capable of being selected for a public-private agreement, the authority must consider all the following:**

- (1) The responsible offeror's expertise, qualifications, competence, skills, and know-how to perform its obligations under the proposed public-private agreement in accordance with the public-private agreement.**
- (2) The financial strength of the responsible offeror, including its capitalization.**
- (3) The experience of the responsible offeror in operating toll roads and highways and other similar projects and the quality of the responsible offeror's past or present performance on other similar or equivalent projects.**
- (4) The integrity, background, and reputation of the responsible offeror, including the absence of criminal, civil, or regulatory claims or actions against the responsible offeror.**

**(c) The requirements set forth in subsection (b) also apply to the approval by the authority of any successor or replacement operator under the public-private agreement after the execution of the public-private agreement under section 11 of this chapter.**

**(d) In making its determination under subsection (b) or (c), the**

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authority shall consider the offeror or operator as well as any private entity that controls the actions of the offeror or operator.

**Sec. 8.** After the final offers from responsible offerors have been negotiated under section 7 of this chapter, the authority shall:

- (1) make a preliminary selection of an offeror as the operator for the related toll road project, whose final offer is referred to in this article as the "selected offer"; or
- (2) terminate the request for proposal process.

**Sec. 9.** If the authority makes a preliminary selection of an operator under section 8 of this chapter, the authority shall schedule a public hearing on the preliminary selection and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice must include the following:

- (1) The date, time, and place of the hearing.
- (2) The subject matter of the hearing.
- (3) A description of the related toll road project and of the public-private agreement to be awarded.
- (4) The identity of the offeror that has been preliminarily selected as the operator for the project.
- (5) The address and telephone number of the authority.
- (6) A statement indicating that, subject to section 6 of this chapter, and except for those portions that are confidential under IC 5-14-3, the selected offer and an explanation of the basis upon which the preliminary selection was made are available for public inspection and copying at the principal office of the authority during regular business hours.

**Sec. 10.** (a) Subject to section 6 of this chapter, and except for those parts that are confidential under IC 5-14-3, the selected offer and a written explanation of the basis upon which the preliminary selection was made shall be made available for inspection and copying in accordance with IC 5-14-3 at least seven (7) days before the hearing scheduled under section 9 of this chapter.

(b) At the hearing, the authority shall allow the public to be heard on the preliminary selection.

**Sec. 11.** (a) After the procedures required in this chapter have been completed, the authority shall make a determination as to whether the offeror that submitted the selected offer should be designated as the operator for the related toll road project and shall submit the authority's determination to the governor and the budget committee.

(b) After review of the authority's determination by the budget

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committee, the governor may accept or reject the determination of the authority. If the governor accepts the determination of the authority, the governor shall designate the offeror who submitted the selected offer as the operator for the related toll road project. The authority shall publish notice of the designation of the operator for the related toll road project one (1) time, in accordance with IC 5-3-1.

(c) After the designation of the operator for the related toll road project, the authority may execute the public-private agreement with that operator.

Sec. 12. Any action to contest the validity of a public-private agreement entered into under this chapter may not be brought after the fifteenth day following the publication of the notice of the designation of an operator under the public-private agreement as provided in section 11 of this chapter.

Sec. 13. The authority shall disclose the contents of all proposals, except the parts of the proposals that may be treated as confidential in accordance with IC 5-14-3, when either:

- (1) the request for proposal process is terminated under section 8 of this chapter; or
- (2) the public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.

#### Chapter 5. Terms and Conditions of Public-Private Agreements

Sec. 1. (a) Before developing or operating a toll road project, a private entity that has been selected as the operator of a toll road project under this article shall enter into a public-private agreement with the authority setting forth the rights and duties of the operator under this article.

(b) A public-private agreement entered into under this article must be approved by the governor before its execution.

Sec. 2. A public-private agreement entered into under this article must provide for the following:

- (1) The original term of the public-private agreement, which may not exceed seventy-five (75) years.
- (2) Provisions for a:
  - (A) lease, franchise, or license of the toll road project and the real property owned by the authority upon which the toll road project is located or is to be located; or
  - (B) management agreement or other contract to operate the toll road project and the real property owned by the authority upon which the toll road project is located or is to be located;

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for a predetermined period. The public-private agreement must provide for ownership of all improvements and real property by the authority in the name of the state.

(3) Monitoring of the operator's maintenance practices by the authority and the taking of actions by the authority that it considers appropriate to ensure that the toll road project is properly maintained.

(4) The basis upon which user fees that may be collected by the operator, as determined under this article, are established.

(5) Compliance with applicable state and federal laws and local ordinances.

(6) Grounds for termination of the public-private agreement by the authority or the operator.

(7) The date of termination of the operator's authority and duties under this article.

(8) Procedures for amendment of the agreement.

**Sec. 3.** In addition to the requirements of section 2 of this chapter, a public-private agreement may include additional provisions concerning the following:

(1) Review and approval by the authority of the operator's plans for the development and operation of the toll road project.

(2) Inspection by the authority of construction of or improvements to the toll road project.

(3) Maintenance by the operator of a policy or policies of public liability insurance (copies of which shall be filed with the authority, accompanied by proofs of coverage) or self-insurance, each in a form and amount satisfactory to the authority to insure coverage of tort liability to the public and employees and to enable the continued operation of the toll road project.

(4) Filing by the operator, on a periodic basis, of appropriate financial statements in a form acceptable to the authority.

(5) Filing by the operator, on a periodic basis, of appropriate traffic reports in a form acceptable to the authority.

(6) Payments to the operator. These payments may consist of one (1) or more of the following:

(A) The retention by the operator of the revenues collected by the operator in the operation and management of the toll road project.

(B) Payments made to the operator by the authority.

(C) Other sources of payment or revenue to the operator, if any.

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(7) Financing obligations of the operator and the authority, including entering into agreements for the benefit of the financing parties.

(8) Apportionment of expenses between the operator and the authority.

(9) The rights and duties of the operator, the authority, and other state and local governmental entities with respect to use of the toll road project, including the state police department and other law enforcement and public safety agencies.

(10) Arbitration or other dispute resolution mechanisms or remedies for the settlement of claims and other disputes arising under the agreement.

(11) Payment of money to either party upon default or delay, or upon termination of the public-private agreement, with the payments to be used:

(A) in the form of liquidated damages to compensate the operator for demonstrated unamortized costs, lost profits, or other amounts as provided in the agreement;

(B) to retire or refinance indebtedness related to the toll road project or the public-private agreement; or

(C) for any other purpose mutually agreeable to the operator and the authority.

(12) Indemnification of the operator by the authority under conditions specified in the agreement.

(13) Assignment, subcontracting, or other delegation of responsibilities of the operator or the authority under the agreement to third parties, including other private entities, the department, and other state agencies.

(14) Sale or lease to the operator of personal property related to the toll road project.

(15) Other lawful terms and conditions to which the operator and the authority mutually agree.

Sec. 4. (a) The operator may finance its obligations with respect to the toll road project and the public-private agreement in the amounts and upon the terms and conditions determined by the operator.

(b) The operator may:

(1) issue debt, equity, or other securities or obligations;

(2) enter into sale and leaseback transactions; and

(3) secure any financing with a pledge of, security interest in, or lien on any user fees charged and collected for the use of the toll road project and any property interest of the operator in the toll

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road project.

However, any bonds, debt, other securities, or other financing issued for the purposes of this article shall not be considered to constitute a debt of the state or any political subdivision of the state or a pledge of the faith and credit of the state or any political subdivision.

(c) The operator may deposit the user fees charged and collected for the use of the toll road project in a separate account held by a trustee or escrow agent for the benefit of the secured parties of the operator.

Sec. 5. Notwithstanding any contrary provision of this article, the authority may enter into a public-private agreement with multiple private entities if the authority determines in writing that it is in the public interest to do so.

Sec. 6. The department or any other state agency may perform any duties and exercise any powers of the authority under this article or the public-private agreement that have been assigned, subcontracted, or delegated to it by the authority.

#### **Chapter 6. Construction and Operating Standards for Toll Road Projects**

Sec. 1. The plans and specifications for each toll road project constructed under this article must comply with:

- (1) the authority's standards for other projects of a similar nature, except as otherwise provided in the public-private agreement; and
- (2) any other applicable state or federal standards.

Sec. 2. Unless otherwise provided by federal law, the operator or any contractor or subcontractor of the operator engaged in the construction of a toll road project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

Sec. 3. The operator or any contractor or subcontractor of the operator engaged in the construction of a toll road project is subject to:

- (1) the provisions of 25 IAC 5 concerning equal opportunities for minority business enterprises and women's business enterprises to participate in procurement and contracting processes; and
- (2) the provisions that may be established by the authority in a

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public-private agreement with respect to awarding contracts to Indiana businesses (as defined in IC 5-22-15-20.5).

**Sec. 4.** Each toll road project constructed or operated under this article is considered to be part of the state highway system designated under IC 8-23-4-2 for purposes of identification, maintenance standards, and enforcement of traffic laws.

**Sec. 5.** An operator may enter into agreements for maintenance or other services under this article with the authority, the department, or other state agencies. The authority may:

- (1) with the assistance of all applicable state agencies, establish a unified permitting and licensing process for the processing and issuance of all necessary permits and licenses for toll road projects under this article, including, but not limited to, all environmental permits and business and tax licenses; and
- (2) provide other services for which the authority is reimbursed, including, but not limited to, preliminary planning, environmental certification (including the procurement of all necessary environmental permits), and preliminary design of toll road projects under this article.

**Sec. 6.** The authority shall seek the cooperation of federal and local agencies to expedite all necessary federal and local permits, licenses, and approvals necessary for toll road projects under this article.

#### **Chapter 7. User Fees**

**Sec. 1. (a)** Notwithstanding IC 8-9.5-8 and IC 8-15-2-14(j), the authority may fix and revise the amounts of user fees that an operator may charge and collect for the use of any part of a toll road project in accordance with the public-private agreement.

**(b)** In fixing the amounts referred to in subsection (a), the authority may:

- (1) establish maximum amounts for the user fees; and
- (2) provide for increases or decreases of the user fees or the maximum amounts established based upon the indices, methodologies, or other factors that the authority considers appropriate.

**Sec. 2.** A schedule of the current user fees shall be made available by the operator to any member of the public on request.

**Sec. 3.** User fees established by the authority under this article are not subject to supervision or regulation by any other commission, board, bureau, or agency of the state, or by any political subdivision.

**Sec. 4.** User fees established by the authority under section 1 of

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this chapter for the use of a toll road project must be nondiscriminatory and may:

- (1) include different user fees based on categories such as vehicle class, vehicle size, vehicle axles, vehicle weight, volume, location, or traffic congestion or such other means or classification as the authority determines to be appropriate;
- (2) vary by time of day or year; or
- (3) be based on one (1) or more factors considered relevant by the authority, which may include any combination of:
  - (A) the costs of:
    - (i) operation;
    - (ii) maintenance; and
    - (iii) repair and rehabilitation;
  - (B) debt service payments on bonds or other obligations;
  - (C) adequacy of working capital;
  - (D) depreciation;
  - (E) payment of user fees, any state, federal, or local taxes, or payments in lieu of taxes; and
  - (F) the sufficiency of income to:
    - (i) maintain the toll road project in a sound physical and financial condition to render adequate and efficient service; and
    - (ii) induce an operator to enter into a public-private agreement.

**Sec. 5. A public-private agreement may:**

- (1) grant an operator a license or franchise to charge and collect tolls for the use of the toll road project;
- (2) authorize the operator to adjust the user fees charged and collected for the use of the toll road project, so long as the amounts charged and collected by the operator do not exceed the maximum amounts established by the authority under section 1 of this chapter;
- (3) provide that any adjustment by the operator permitted under subdivision (2) may be based on such indices, methodologies, or other factors as described in the public-private agreement or as approved by the authority;
- (4) authorize the operator to charge and collect user fees through manual and nonmanual methods, including, but not limited to, automatic vehicle identification systems, electronic toll collection systems, and, to the extent permitted by law, including rules adopted by the authority under IC 8-15-2-17.2(a)(10), global positioning systems and photo or

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video based toll collection or toll collection enforcement systems; and

(5) authorize the collection of user fees charges by a third party.

Sec. 6. (a) As used in this section, "Class 2 vehicle" means any vehicle with two (2) axles, including motorcycles.

(b) If the authority enters into a public-private agreement concerning the operation of the Indiana Toll Road, the authority shall enter into a written agreement with the operator concerning the implementation of electronic or nonmanual means of collecting user fees imposed on Class 2 vehicles.

Sec. 7. (a) After expiration of a public-private agreement, the authority may:

(1) continue to charge user fees for the use of the toll road project; or

(2) delegate to a third party the authority to continue to collect the user fees.

(b) Revenues collected under this section must first be used for operations and maintenance of the toll road project. Any revenues determined by the authority to be excess must be paid to the authority for deposit in the toll road fund established by IC 8-15.5-11.

Sec. 8. Any action to contest the validity of user fees fixed under this chapter may not be brought after the fifteenth day following the effective date of a rule fixing the user fees adopted under IC 4-22-2-37.1(a)(30).

#### Chapter 8. Taxation of Operators

Sec. 1. A toll road project and tangible personal property used exclusively in connection with a toll road project that are:

(1) owned by the authority and leased, franchised, licensed, or otherwise conveyed to an operator; or

(2) acquired, constructed, or otherwise provided by an operator in connection with the toll road project;

under the terms of a public-private agreement are considered to be public property devoted to an essential public and governmental function and purpose and the property, and an operator's leasehold estate, franchise, license, and other interests in the property, are exempt from all ad valorem property taxes and special assessments levied against property by the state or any political subdivision of the state.

Sec. 2. Income received by an operator under the terms of a public-private agreement is subject to taxation in the same manner as income received by other private entities.

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**Sec. 3.** An operator or any other person purchasing tangible personal property for incorporation into or improvement of a structure or facility constituting or becoming part of the land included in the toll road project is not exempt from the application of the gross retail or use tax under IC 6-2.5 with respect to such a purchase.

#### **Chapter 9. Records of Operators**

**Sec. 1.** Records that are provided by an operator to the authority that relate to compliance by an operator with the terms of a public-private agreement are subject to inspection and copying in accordance with IC 5-14-3.

#### **Chapter 10. Additional Powers of the Authority Concerning Toll Road Projects**

**Sec. 1.** The authority may exercise any powers provided under this article in participation or cooperation with the department or any other governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute.

**Sec. 2. (a)** The authority may make and enter into all contracts and agreements necessary or incidental to the performance of the authority's duties and the execution of the authority's powers under this article. These contracts or agreements are not subject to any approvals other than the approval of the authority and may be for any term of years and contain any terms that are considered reasonable by the authority.

**(b)** The department and any other state agency may make and enter into all contracts and agreements necessary or incidental to the performance of the duties and the execution of the powers granted to the department or the state agency in accordance with this article or the public-private agreement. These contracts or agreements are not subject to any approvals other than the approval of the department or state agency and may be for any term of years and contain any terms that are considered reasonable by the department or the state agency.

**Sec. 3. (a)** The authority may pay any amounts owed by the authority under a public-private agreement entered into under this article from any funds available to the authority under this article or any other statute.

**(b)** Subject to review by the budget committee established by IC 4-12-1-3 and approval by the budget director appointed under IC 4-12-1-3, a public-private agreement entered into under this article may:

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(1) establish a procedure for the authority or a person acting on behalf of the authority to certify to the general assembly the amount needed to pay any amounts owed by the authority under a public-private agreement; or

(2) otherwise create a moral obligation of the state to pay any amounts owed by the authority under the public-private agreement.

(c) The authority may issue bonds under IC 4-4-11 or IC 8-15-2 to provide funds for any amounts identified under this section without complying with IC 8-9.5-8-10.

Sec. 4. For purposes of this article, the authority may authorize an operator under a public-private agreement to perform any of its duties under IC 8-15-2-1, IC 8-15-2-6, IC 8-15-2-18, and IC 8-15-2-24.

Sec. 5. The authority may exercise any of its powers under IC 8-15-2 or any other provision of the Indiana Code as necessary or desirable for the performance of the authority's duties and the execution of the authority's powers under this article.

Sec. 6. The authority may not take any action under this chapter that would impair the public-private agreement entered into under this article.

Sec. 7. (a) The authority shall enter into an agreement between and among the operator, the authority, and the state police department concerning the provision of law enforcement assistance with respect to a toll road project that is the subject of a public-private agreement under this article.

(b) The authority shall enter into arrangements with the state police department related to costs incurred in providing law enforcement assistance under this article.

(c) All law enforcement officers of the state and any political subdivision have the same powers and jurisdiction within the limits of a toll road project as they have in their respective areas of jurisdiction, including the roads and highways of the state. These law enforcement officers shall have access to a toll road project that is the subject of a public-private agreement to exercise their powers and jurisdiction.

#### Chapter 11. Toll Road Fund

Sec. 1. As used in this chapter, "account" refers to an account established within the fund.

Sec. 2. As used in this chapter, "fund" refers to the toll road fund established by section 3 of this chapter.

Sec. 3. (a) The toll road fund is established to provide funds to:

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- (1) pay or defease certain bonds in the manner provided by this chapter;
- (2) pay amounts owed by the authority in connection with the execution and performance of a public-private agreement under this article, including operating expenses of the authority; and
- (3) make distributions to the next generation trust fund and the major moves construction fund.
- (b) The authority shall hold, administer, and manage the fund.
- (c) Expenses of administering the fund shall be paid from money in the fund.
- (d) The fund consists of the following:
  - (1) Money received from an operator under a public-private agreement.
  - (2) Appropriations, if any, made by the general assembly.
  - (3) Grants and gifts intended for deposit in the fund.
  - (4) Interest, premiums, gains, or other earnings on the fund.
  - (5) Amounts transferred to the fund under subsection (i).
  - (6) Amounts transferred to the fund under IC8-14-14-6(a)(5)
- (e) The authority shall establish the following separate accounts within the fund:
  - (1) The bond retirement account.
  - (2) The administration account.
  - (3) The eligible project account.
- (f) Money in the fund shall be deposited, paid, and secured in the manner provided by IC 4-4-11-32. Notwithstanding IC 5-13, the authority shall invest the money in the fund that is not needed to meet the obligations of the fund in the manner provided by an investment policy established by resolution of the authority.
- (g) The fund is not part of the state treasury and is considered a trust fund for purposes of IC 4-9.1-1-7. Money may not be transferred, assigned, or otherwise removed from the fund by the state board of finance, the budget agency, or any other state agency.
- (h) Money in the fund at the end of a state fiscal year does not revert to the state general fund.
- (i) As soon as practicable after a public-private agreement concerning the Indiana Toll Road has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted, the authority shall determine the total balance remaining in all toll road funds and accounts established under IC 8-15-2. Subject to any applicable trust indentures securing toll road bonds, the authority may retain

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from those funds and accounts the amounts necessary to pay outstanding obligations with respect to the operation of the Indiana Toll Road incurred before the effective date of the public-private agreement, and shall transfer all remaining balances in the toll road funds and accounts to the fund.

**Sec. 4. (a)** Before any allocations are made from the fund under this chapter, the authority shall determine:

- (1) the extent to which outstanding bonds issued by the authority under IC 8-14.5-6 or IC 8-15-2 should be repaid, defeased, or otherwise retired;
- (2) the total amount necessary to repay, defease, or otherwise retire the bonds selected by the authority for repayment, defeasance, or retirement; and
- (3) the total amount necessary to pay the amounts owed by the authority related to the execution and performance of a public-private agreement under this article, including establishing reserves, plus the amount necessary to establish an escrow account to implement a written agreement entered into under IC 8-15.5-7-6 to fund reductions in, or refunds of, user fees imposed on Class 2 vehicles.

The authority shall make a separate determination of the amount described in subdivision (3) for each public-private agreement. The amount described in subdivision (3) is payable solely from money received by the authority under the public-private agreement for which the amounts owed were incurred, and are not payable from lease payments received under IC 8-9.5 or IC 8-14.5.

(b) Before making any allocations from the fund under subsection (c) or (d), the authority shall allocate the amount determined under subsection (a)(2) to the bond retirement account. Money in this account may be used only for the purpose described in section 3(a)(1) of this chapter.

(c) After making the allocation required by subsection (b) and before making the allocations required by subsection (d), the authority shall allocate the amount determined under subsection (a)(3) to the administration account. Money in this account may be used only for the purpose described in section 3(a)(2) of this chapter.

(d) After making the allocations required by subsections (b) and (c), the remaining money received during each state fiscal year under a public-private agreement under this article shall be allocated to the eligible project account. Money in this account may be used only for the purposes described in section 3(a)(3) of this

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chapter. Within thirty (30) days after a public-private agreement concerning the Indiana Toll Road has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted, the authority shall transfer:

- (1) five hundred million dollars (\$500,000,000) of the money in the eligible project account to the next generation trust fund established under IC 8-14-15; and
- (2) the remainder of the money in the eligible project account to the major moves construction fund.

In addition, any amounts transferred to the fund under section 3(i) of this chapter after the date described in this subsection shall be transferred to the major moves construction fund.

**Sec. 5.** The money allocated to the eligible project account must be used to make distributions to the next generation trust fund and the major moves construction fund, as provided by section 4 of this chapter.

#### **Chapter 12. Prohibited Local Action**

**Sec. 1.** A political subdivision (as defined in IC 36-1-2-13) may not take any action that would have the effect of impairing a public-private agreement under this article.

#### **Chapter 13. Prohibited Political Contributions**

**Sec. 1.** The definitions in IC 3-5-2 apply to this chapter to the extent they do not conflict with the definitions in this article.

**Sec. 2.** As used in this chapter, "candidate" refers to any of the following:

- (1) A candidate for a state office.
- (2) A candidate for a legislative office.
- (3) A candidate for a local office.

**Sec. 3.** As used in this chapter, "committee" refers to any of the following:

- (1) A candidate's committee.
- (2) A regular party committee.
- (3) A committee organized by a legislative caucus of the house of representatives of the general assembly.
- (4) A committee organized by a legislative caucus of the senate of the general assembly.

**Sec. 4.** As used in this chapter, "officer" refers only to either of the following:

- (1) An individual listed as an officer of a corporation in the corporation's most recent annual report.
- (2) An individual who is a successor to an individual described

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in subdivision (1).

**Sec. 5.** For purposes of this chapter, a person is considered to have an interest in an operator if the person satisfies any of the following:

- (1) The person holds at least a one percent (1%) interest in an operator.
- (2) The person is an officer of an operator.
- (3) The person is an officer of a person that holds at least a one percent (1%) interest in an operator.
- (4) The person is a political action committee of an operator.

**Sec. 6.** An operator is considered to have made a contribution if a contribution is made by a person who has an interest in the operator.

**Sec. 7.** An operator or a person who has an interest in an operator may not make a contribution to a candidate or a committee during the following periods:

- (1) The term during which the operator is a party to a public-private agreement entered into under this article.
- (2) The three (3) years following the final expiration or termination of the public-private agreement described in subdivision (1).

**Sec. 8.** A person who knowingly or intentionally violates this chapter commits a Class D felony.

SECTION 40. IC 8-15.7 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

## **ARTICLE 15.7. PUBLIC-PRIVATE PARTNERSHIPS**

### **Chapter 1. General Provisions**

**Sec. 1.** The general assembly finds the following:

- (1) There is a public need for timely development and operation of transportation facilities in Indiana that address the needs identified by the department, through the department's transportation plan and otherwise, by accelerating project delivery, improving safety, reducing congestion, increasing mobility, improving connectivity, increasing capacity, enhancing economic efficiency, promoting economic development, or any combination of those methods.
- (2) This public need may not be wholly satisfied by existing methods of procurement and project delivery in which transportation facilities are developed, financed, or operated.
- (3) Authorizing private entities to do all or part of the development, planning, design, construction, maintenance,

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repair, rehabilitation, expansion, financing, and operation of one (1) or more transportation facilities may result in the availability of the transportation facilities to the public in a more timely, more efficient, or less costly fashion, thereby serving the public safety and welfare.

**Sec. 2.** An action, other than an approval by the authority or the department under IC 8-15.7-4, serves the public purpose of this article if the action facilitates the timely development, planning, design, construction, maintenance, repair, rehabilitation, expansion, financing, or operation of a qualifying project.

**Sec. 3.** It is the intent of this article to:

- (1) encourage investment in Indiana by private entities that facilitates the development, planning, design, construction, maintenance, repair, rehabilitation, expansion, financing, and operation of transportation facilities; and
- (2) grant public and private entities the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this article.

**Sec. 4.** The powers conferred by this article shall be liberally construed in order to accomplish their purposes and are in addition and supplemental to the powers conferred by any other law. If any other law or rule is inconsistent with this article, this article is controlling as to any public-private agreement entered into under this article.

**Sec. 5. (a)** This article contains full and complete authority for agreements and leases with private entities to carry out the activities described in this article. Except as provided in this article, no procedure, proceeding, publication, notice, consent, approval, order, or act by the authority, the department, or any other state or local agency or official is required to enter into an agreement or lease, and no law to the contrary affects, limits, or diminishes the authority for agreements and leases with private entities, except as provided by this article.

**(b)** Notwithstanding any other law, the department, the authority, or an operator may not carry out any of the following activities under this article unless the general assembly enacts a statute authorizing that activity:

- (1) Issuing a request for proposals for, or entering into, a public-private agreement concerning a project other than Interstate Highway 69 between Interstate Highway 465 and Interstate Highway 64.
- (2) Carrying out construction for Interstate Highway 69 in a

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township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).

(3) Imposing user fees on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).

Sec. 6. To the extent that this article permits or requires the authority, the department, or a private entity to carry out any law other than this article under a public-private agreement, the action shall be carried out in conformity with this article.

#### **Chapter 2. Definitions**

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Affected jurisdiction" means the following:

- (1) Any county, city, or town in which all or a part of a qualifying project is located.
- (2) Any other public entity directly affected by the qualifying project.

Sec. 3. "Authority" or "Indiana finance authority" refers to the Indiana finance authority established by IC 4-4-11-4.

Sec. 4. "Department" refers to the Indiana department of transportation.

Sec. 5. "Develop" or "development" means to do one (1) or more of the following:

- (1) Plan.
- (2) Design.
- (3) Develop.
- (4) Lease.
- (5) Acquire.
- (6) Install.
- (7) Construct.
- (8) Reconstruct.
- (9) Rehabilitate.
- (10) Extend.
- (11) Expand.

Sec. 6. "Highway, street, or road" has the meaning set forth in IC 8-23-1-23.

Sec. 7. "Law enforcement officer" has the meaning set forth in IC 35-41-1-17.

Sec. 8. "Maintenance" includes ordinary maintenance, repair,

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rehabilitation, capital maintenance, maintenance replacement, and any other categories of maintenance that may be designated by the department.

Sec. 9. "Offeror" means a private entity that has submitted a qualification submittal or a proposal for a public-private agreement under this article.

Sec. 10. "Operate" or "operation" means to do one (1) or more of the following:

- (1) Maintain.
- (2) Improve.
- (3) Equip.
- (4) Modify.
- (5) Otherwise operate.

Sec. 11. "Operator" means a private entity that has entered into a public-private agreement with the department to provide services to or on behalf of the department.

Sec. 12. "Political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 13. "Private entity" means any combination of one (1) or more individuals, corporations, general partnerships, limited liability companies, limited partnerships, joint ventures, business trusts, nonprofit entities, or other business entities that are parties to a proposal for a qualifying project or a public-private agreement related to a qualifying project. A public agency may provide services to an operator as a subcontractor or subconsultant without affecting the private status of the private entity and the entity's or operator's ability to enter into a public-private agreement.

Sec. 14. Subject to IC 8-15.7-1-5, "project" means all or part of the following:

- (1) A limited access facility (as defined in IC 8-23-1-28).
- (2) A tollway.
- (3) Roads and bridges.
- (4) All or part of a bridge, tunnel, overpass, underpass, interchange, structure, ramp, access road, service road, entrance plaza, approach, tollhouse, utility corridor, toll gantry, rest stop, service area, or administration, storage, or other building or facility, including temporary facilities and buildings or facilities and structures that will not be tolled, that the department determines is appurtenant, necessary, or desirable for the development, financing, or operation of the facilities described in subdivisions (1), (2), and (3).

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(5) An improvement, betterment, enlargement, extension, or reconstruction of all or part of any of the facilities described in this section, including a nontolled part, that is separately designated by name or number.

Sec. 15. "Public-private agreement" means the public-private agreement between the operator and the department that relates to any combination of the development, financing, or operation of a qualifying project and is entered into under this article.

Sec. 16. "Qualifying project" means one (1) or more projects developed, financed, or operated by an operator under this article.

Sec. 17. "Request for proposals" means all materials and documents prepared by or on behalf of the department to solicit proposals from offerors to enter into a public-private agreement.

Sec. 18. "Request for qualifications" means all materials and documents prepared by or on behalf of the department to solicit qualification submittals from offerors to enter into a public-private agreement.

Sec. 19. "Revenues" means all revenues, including any combination of:

- (1) income;
- (2) earnings and interest;
- (3) user fees;
- (4) lease payments;
- (5) allocations;
- (6) federal, state, and local appropriations, grants, loans, lines of credit, and credit guarantees;
- (7) bond proceeds;
- (8) equity investments; or
- (9) other receipts;

arising out of or in connection with a qualifying project, including the development, financing, and operation of a qualifying project. The term includes money received as grants, loans, lines of credit, credit guarantees, or otherwise in aid of a qualifying project from the federal government, the state, a political subdivision, or any agency or instrumentality of the federal government, the state, or a political subdivision.

Sec. 20. "Tollway" has the meaning set forth in IC 8-15-3-7.

Sec. 21. "Transportation plan" has the meaning set forth in IC 8-23-1-41.

Sec. 22. "User fees" means the rates, tolls, or fees imposed for use of, or incidental to, all or part of a qualifying project under a public-private agreement.

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### **Chapter 3. Formation of an Agreement**

**Sec. 1. Subject to IC 8-15.7-1-5, the department may exercise the powers granted by this article to carry out:**

- (1) the development;**
- (2) the financing;**
- (3) the operation; or**
- (4) any combination of the development, financing, and operation;**

**of all or part of one (1) or more projects through public-private agreements with one (1) or more private entities. The parties to a public-private agreement that relates to a tollway or a project that otherwise charges user fees may exercise any of the powers granted to the party under IC 8-15-3. The department may use the revenues arising out of one (1) project or public-private agreement for all or part of the development, financing, and operation of any part of one (1) or more other projects through public-private agreements with one (1) or more private entities or as otherwise considered appropriate by the department.**

**Sec. 2. An operator has:**

- (1) all powers allowed by law generally to a private entity having the same form of organization as the operator; and**
- (2) the power to develop, finance, and operate the qualifying project and impose user fees in connection with the use of the qualifying project.**

**Tolls or user fees may not be imposed by the operator except as set forth in a public-private agreement. User fees and the setting of user fee rates are not subject to supervision or regulation by any commission, board, bureau, or agency of the state or any municipality, other than the department to the extent set forth in the public-private agreement.**

**Sec. 3. The operator may own, lease, or acquire any property interest or other right to develop, finance, or operate the qualifying project.**

**Sec. 4. In operating the qualifying project, the operator may do the following:**

- (1) Make user classifications as permitted in the public-private agreement.**
- (2) As permitted in the public-private agreement or otherwise with the consent of the department, make and enforce reasonable rules to the same extent that the department may make and enforce rules with respect to a similar project.**

**Sec. 5. The department shall establish a program to facilitate**

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participation in qualifying projects by:

- (1) small businesses that qualify for a small business set-aside under IC 4-13.6-2-11;
- (2) businesses certified under IC 4-13-16.5 as a minority business enterprise;
- (3) businesses certified under IC 4-13-16.5 as a women's business enterprise;
- (4) businesses treated as disadvantaged business enterprises under federal or state law; and
- (5) businesses defined under IC 5-22-15-20.5 as Indiana businesses, to the extent permitted by applicable federal and state law and regulations.

#### **Chapter 4. Procurement Process**

**Sec. 1. (a)** The department may request proposals from private entities for all or part of the development, financing, and operation of one (1) or more projects.

**(b)** If all or part of the project will consist of a tollway, the department shall take the following steps before the commencement of the procurement process under this chapter:

**(1)** The department shall cause to be prepared a preliminary feasibility study on that part of the project consisting of a tollway by a firm or firms internationally recognized in the preparation of studies or reports on the financial feasibility of proposed toll road projects. The preliminary feasibility study must be based upon a public-private financial and project delivery structure.

**(2)** After the completion of the preliminary feasibility study, the department shall schedule a public hearing on the proposed project and the preliminary feasibility study and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice must include the following:

- (A)** The date, time, and place of the hearing.
- (B)** The subject matter of the hearing.
- (C)** A description of the proposed project, its location, the part of the project consisting of a tollway, and, consistent with the assessments reached in the preliminary feasibility study, the estimated total cost of the acquisition, construction, installation, equipping, and improving of the proposed project, as well as the part of the project consisting of a tollway.
- (D)** The address and telephone number of the department.

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(3) At the hearing, the department shall allow the public to be heard on the proposed project and the preliminary feasibility study.

(4) After the public hearing described in subdivision (2), the department shall submit the preliminary feasibility study to the budget committee for its review before the commencement of the procurement process under this chapter.

Sec. 2. (a) This section establishes the competitive proposal procedure that the department shall use to enter into a public-private agreement with an operator under this article.

(b) The department may pursue a competitive proposal procedure using a request for qualifications and a request for proposals process or proceed directly to a request for proposals.

(c) If the department elects to use a request for qualifications phase, it must provide a public notice of the request for qualifications, for the period considered appropriate by the department, before the date set for receipt of submittals in response to the solicitation. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, submittals in response to the solicitation may be solicited directly from potential offerors.

(d) The department shall evaluate qualification submittals based on the requirements and evaluation criteria set forth in the request for qualifications.

(e) If the department has undertaken a request for qualifications phase resulting in one (1) or more prequalified or shortlisted offerors, the request for proposals shall be limited to those offerors that have been prequalified or shortlisted.

(f) If the department has not issued a request for qualifications and intends to use only a one (1) phase request for proposals procurement, the department must provide a public notice of the request for proposals for the period considered appropriate by the department, before the date set for receipt of proposals. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, proposals may be solicited directly from potential offerors.

(g) The department shall submit a draft of the request for proposals to the budget committee for its review before the issuance by the department of the request for proposals to potential offerors. The request for proposals must:

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- (1) indicate in general terms the scope of work, goods, and services sought to be procured;
  - (2) contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement and the qualifying project;
  - (3) specify the factors, criteria, and other information that will be used in evaluating the proposals;
  - (4) specify any requirements or goals for use of:
    - (A) minority business enterprises and women's business enterprises certified under IC 4-13-16.5;
    - (B) disadvantaged business enterprises under federal or state law;
    - (C) businesses defined under IC 5-22-15-20.5 as Indiana businesses, to the extent permitted by applicable federal and state law and regulations; and
    - (D) businesses that qualify for a small business set-aside under IC 4-13.6-2-11;
  - (5) if all or part of the project will consist of a tollway, require any offeror to submit a proposal based upon that part of the project that will consist of a tollway, as set forth in the request for proposals, and permit any offeror to submit one (1) or more alternative proposals based upon the assumption that a different part or none of the project will consist of a tollway;
  - (6) contain or incorporate by reference the other applicable contractual terms and conditions; and
  - (7) contain or incorporate by reference any other provisions, materials, or documents that the department considers appropriate.
- (h) The department shall determine the evaluation criteria that are appropriate for each project and shall set those criteria forth in the request for proposals. The department may use a selection process that results in selection of the proposal offering the best value to the public, a selection process that results in selection of the proposal offering the lowest price or cost or the highest payment to, or revenue sharing with, the department, or any other selection process that the department determines is in the best interests of the state and the public.
- (i) The department shall evaluate proposals based on the requirements and evaluation criteria set forth in the request for proposals.
- (j) The department may select one (1) or more offerors for negotiations based on the evaluation criteria set forth in the

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request for proposals. If the department believes that negotiations with the selected offeror or offerors are not likely to result in a public-private agreement, or, in the case of a best value selection process, no longer reflect the best value to the state and the public, the department may commence negotiations with other responsive offerors, if any, and may suspend, terminate, or continue negotiations with the original offeror or offerors. If negotiations are unsuccessful, the department shall terminate the procurement, may not award the public-private agreement, and may commence a new procurement for a public-private agreement. If the department determines that negotiations with an offeror have been successfully completed, the department shall, subject to the other requirements of this article, award the public-private agreement to the offeror.

(k) Before awarding a public-private agreement to an operator, the department shall schedule a public hearing on the proposed public-private agreement and publish notice of the hearing one (1) time in accordance with IC 5-3-1 at least seven (7) days before the hearing. The notice must include the following:

- (1) The date, time, and place of the hearing.
- (2) The subject matter of the hearing.
- (3) A description of the agreement to be awarded.
- (4) The recommendation that has been made to award the agreement to an identified offeror or offerors.
- (5) The address and telephone number of the department.

(l) At the hearing, the department shall allow the public to be heard on the proposed public-private agreement.

(m) When the terms and conditions of multiple awards are specified in the request for proposals, awards may be made to more than one (1) offeror.

Sec. 3. (a) After the procedures required in this chapter have been completed, the department shall make a determination as to whether the successful offeror should be designated as the operator for the project and shall submit its decision to the governor and the budget committee.

(b) After review of the department's determination by the budget committee, the governor may accept or reject the determination of the department. If the governor accepts the determination of the department, the governor shall designate the successful offeror as the operator for the project. The department shall publish notice of the designation of the operator one (1) time, in accordance with IC 5-3-1.

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(c) After the designation of the successful offeror as the operator for the project, the department may execute the public-private agreement.

(d) An action to contest the validity of a public-private agreement entered into under this chapter may not be brought after the fifteenth day following the publication of the notice of the designation of the operator under the public-private agreement under subsection (b).

Sec. 4. The department may pay a stipulated amount to an unsuccessful offeror that submits a responsive proposal in response to a request for proposals under this chapter, in exchange for the work product contained in that proposal. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

- (1) the department and the unsuccessful offeror jointly own the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan; and
- (2) the use by the unsuccessful offeror of any part of the work product contained in the proposal is at the sole risk of the unsuccessful offeror and does not confer liability on the department.

Sec. 5. In addition to any other rights under this article, in connection with any procurement under this chapter, the department may:

- (1) withdraw a request for qualifications or a request for proposals at any time and, in its discretion, publish a new request for qualifications or request for proposals;
- (2) decline to award a public-private agreement for any reason;
- (3) request clarifications to any qualification submittal or request for proposals or seek one (1) or more revised proposals or one (1) or more best and final offers;
- (4) modify the terms, provisions, and conditions of a request for qualification, request for proposals, technical specifications, or form of public-private agreement during the pendency of a procurement; and
- (5) interview offerors.

Sec. 6. (a) The department may not disclose the contents of proposals during discussions or negotiations with potential

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offerors.

(b) The department may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the department and potential offerors if those records are created while discussions or negotiations are in progress.

(c) Notwithstanding subsections (a) and (b), and with the exception of portions that are confidential under IC 5-14-3, the terms of the selected offer negotiated under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.

(d) When disclosing the terms of the selected offer under subsection (c), the department shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

(e) The department shall disclose the contents of all proposals, except the parts of the proposals that may be treated as confidential in accordance with IC 5-14-3, when either:

- (1) the request for proposal process is terminated under section 5 of this chapter; or
- (2) the public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.

#### **Chapter 5. Public-Private Agreements**

##### **Sec. 1. (a) Before beginning:**

- (1) the development;
- (2) the financing;
- (3) the operation; or
- (4) any combination of the development, financing, or operation;

of a qualifying project, the operator must enter into a public-private agreement with the department. Subject to the other provisions of this article, the department and a private entity may enter into a public-private agreement with respect to a project. Subject to the requirements of this article, a public-private agreement may provide that the private entity, acting on behalf of the department or the authority, is partially or entirely responsible for any combination of developing, financing, or operating the qualifying project.

(b) The public-private agreement may, as determined appropriate by the department for the particular qualifying project, provide for all or part of the following:

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(1) Delivery of performance and payment bonds or other performance security determined suitable by the department, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the qualifying project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by the department to protect the department and payment bond beneficiaries who have a direct contractual relationship with the operator or a subcontractor of the operator to supply labor or material. A payment or performance bond or alternative form of performance security required under a public-private agreement shall not be required for the part of a public-private agreement that includes only design, planning, or financing services, the performance of preliminary studies, or the acquisition of real property.

(2) Review of plans for any development or operation, or both, of the qualifying project by the department.

(3) Inspection of any construction of or improvements to the qualifying project by the department or another entity designated by the department or under the public-private agreement to ensure that the construction or improvements conform to the standards set forth in the public-private agreement or are otherwise acceptable to the department.

(4) Maintenance of:

(A) one (1) or more policies of public liability insurance (copies of which shall be filed with the department accompanied by proofs of coverage); or

(B) self-insurance;

each in the form and amount required by the public-private agreement or otherwise satisfactory to the department as reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

(5) If operations are included within the operator's obligations under the public-private agreement, monitoring of the maintenance practices of the operator by the department or another entity designated by the department or under the public-private agreement, and the taking of the actions that the department finds appropriate to ensure that the qualifying project is properly maintained.

(6) Reimbursement to be paid to the department as set forth in

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the public-private agreement for services provided by the department.

(7) Filing of appropriate financial statements and reports as set forth in the public-private agreement or as otherwise in a form acceptable to the department on a periodic basis.

(8) Compensation or payments to the operator, attorneys, bankers, financial advisors, or other professionals. Compensation or payments may include one (1) or more of the following:

(A) A development fee, payable on a lump sum basis, progress payment basis, time and materials basis, or any other basis considered appropriate by the department.

(B) An operations fee, payable on a lump sum basis, time and material basis, periodic basis, or any other basis considered appropriate by the department.

(C) All or part of the revenues, if any, arising out of operation of the qualifying project.

(D) A maximum rate of return on investment or return on equity or a combination of the two (2).

(E) In kind services, materials, property, equipment, or other items.

(F) Compensation in the event of any termination.

(G) A cash payment to pay part of the project cost.

(H) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the department.

(9) Compensation or payments to the department, if any. Compensation or payments may include one (1) or more of the following:

(A) A concession payment, lease payment, or other fee, which may be payable in a lump sum, on a periodic basis, or on any other basis considered appropriate by the department.

(B) Sharing of revenues, if any, from the operation of the qualifying project.

(C) Payment for any services, materials, equipment, personnel, or other items provided by the department to the operator under the public-private agreement or in connection with the qualifying project.

(D) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the department.

(10) The date and terms of termination of the operator's

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authority and duties under this article, and circumstances under which the operator's authority and duties may be terminated before that date.

(11) Reversion of the qualifying project to the department at the termination or expiration of the public-private agreement.

(12) Rights and remedies of the department if the operator defaults or otherwise fails to comply with the terms of the public-private agreement.

(c) A public-private agreement may not provide that the state or the department is responsible for any debt incurred by an operator in connection with the delivery of a project.

Sec. 2. (a) The department may fix and revise the amounts of user fees that an operator may charge and collect for the use of any part of a qualifying project in accordance with the public-private agreement. In fixing these amounts, the department may:

- (1) establish maximum amounts for the user fees; and
- (2) provide for increases or decreases of the maximum amounts based upon the indices, methodologies, or other factors that the department considers appropriate.

(b) User fees established by the department for the use of a qualifying project must be nondiscriminatory and may:

- (1) include different user fees based on categories such as vehicle class, vehicle size, vehicle axles, vehicle weight, volume, location, traffic congestion, or other means or classification that the department determines to be appropriate;
- (2) vary by time of day or year; and
- (3) be based on one (1) or more factors considered relevant by the department, which may include any combination of:

- (A) lease payments;
- (B) financing costs and charges;
- (C) debt repayment, including principal and interest;
- (D) costs of development;
- (E) costs of operation;
- (F) working capital;
- (G) reserves;
- (H) depreciation;
- (I) compensation to the operator;
- (J) compensation to the department; and
- (K) other costs, expenses, and factors set forth in the public-private agreement or otherwise considered appropriate by the department.

(c) A public-private agreement may:

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(1) authorize the operator to adjust the user fees for the use of the qualifying project, so long as the amounts charged and collected by the operator do not exceed the maximum amounts established by the department under this chapter;

(2) provide that any adjustment by the operator permitted under subdivision (1) may be based on indices, methodologies, or other factors described in the public-private agreement or approved by the department;

(3) authorize the operator to charge and collect user fees through manual and nonmanual methods, including, but not limited to, automatic vehicle identification systems, electronic toll collection systems, and, to the extent permitted by law, including rules adopted by the department, global positioning systems and photo or video based toll collection enforcement systems; and

(4) authorize the collection of user fees by a third party.

(d) A schedule of the current user fees shall be made available by the operator to any member of the public on request. User fees and the setting of user fee rates are not subject to supervision or regulation by any other commission, board, bureau, or agency of the state or any municipality, except to the extent set forth in the public-private agreement.

(e) Any action to contest the validity of user fees fixed under this chapter may not be brought after the fifteenth day following the effective date of a rule fixing the user fees.

Sec. 3. In the public-private agreement, the department may agree to make grants or loans for the development or operation, or both, of the qualifying project from amounts received from the federal government, any agency or instrumentality of the federal government, or any state or local agency.

Sec. 4. The public-private agreement must incorporate the duties of the operator under this article and may contain the other terms and conditions that the department determines serve the public purpose of this article. The public-private agreement may contain provisions under which the department or the authority agrees to provide notice of default and cure rights for the benefit of the operator and the persons or entities described in the public-private agreement that are providing financing for the qualifying project. The public-private agreement may contain any other lawful term or condition to which the operator and the department mutually agree, including provisions regarding change orders, dispute resolution, required upgrades to the qualifying project, tolling

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policies, changes and modifications to the qualifying project, unavoidable delays, or provisions for a loan or grant of public funds for the development or operation, or both, of one (1) or more qualifying projects.

**Sec. 5.** To the extent that the department receives any payment or compensation under the public-private agreement other than repayment of a loan or grant or reimbursement for services provided by the department to the operator, the payment or compensation shall be distributed at the direction of the department to the:

- (1) major moves construction fund established under IC 8-14-14;
- (2) department for deposit in the state highway fund established by IC 8-23-9-54; or
- (3) operator or the authority for debt reduction.

**Sec. 6. (a)** Upon the termination or expiration of the public-private agreement, including a termination for default, the department may take over the qualifying project and succeed to all of the right, title, and interest in the qualifying project. The department may agree to accept the qualifying project subject to any liens on revenues previously granted by the operator to any person providing financing for the qualifying project.

**(b)** If the department elects to take over a qualifying project, the department may do all or part of the following:

- (1) Develop, finance, or operate the project.
- (2) Impose, collect, retain, and use user fees, if any, for the project.

**(c)** The department may use any revenues collected under this section for any of the following purposes or any other authorized use under this article:

- (1) Making payments to individuals or entities in connection with the financing of the qualifying project.
- (2) Paying development costs of the project.
- (3) Paying current operation costs of the project or facilities, including compensation to the department for the services of the department in operating the qualifying project.
- (4) Paying the operator for any compensation or payment owing upon termination.

**(d)** The full faith and credit of the state or any political subdivision or the authority is not pledged to secure any financing of the operator by the election to take over the qualifying project. Assumption of development or operation, or both, of the qualifying

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project does not obligate the state or any political subdivision or the authority to pay any obligation of the operator.

Sec. 7. Any changes in the terms of the public-private agreement agreed to by the parties shall be added to the public-private agreement by written amendment.

Sec. 8. Notwithstanding any other provision of this article, the department may enter into a public-private agreement with multiple private entities if the department determines in writing that it is in the public interest to do so.

Sec. 9. The public-private agreement may provide for all or part of the development, financing, or operation of phases or segments of the qualifying project.

Sec. 10. The department may enter into one (1) or more memoranda of understanding with respect to the implementation and administration of a public-private agreement. The memoranda may provide that the department has responsibility for, and shall administer and oversee certain aspects of the implementation of, the public-private agreement under this article, including:

- (1) undertaking any oversight and monitoring of the operator as provided under the public-private agreement;
- (2) reviewing plans for development and operation, as applicable, as provided under the public-private agreement;
- (3) granting or denying all consents and approvals as provided under the public-private agreement, except for consents and approvals relating to financial matters that the department is not permitted to grant or deny under applicable law, in which case the authority shall execute the consents and approvals prepared by the department;
- (4) receiving all development, operations, and financial reports prepared by the operator or others, as provided under the public-private agreement;
- (5) preparing, negotiating, and executing any change orders and amendments to the public-private agreement;
- (6) issuing other written correspondence and communications on behalf of the authority as provided under the public-private agreement;
- (7) preparing and issuing noncompliance letters and reports, warning notices, and default letters to the operator as provided under the public-private agreement; and
- (8) exercising rights and remedies for a breach or default by the operator as provided under the public-private agreement, except for rights and remedies relating to financial matters that

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the department is not permitted to exercise under applicable law, in which case the authority shall exercise the rights and remedies.

#### **Chapter 6. Development and Operations Standards for Projects**

**Sec. 1.** The plans and specifications, if any, for each project developed under this article must comply with:

- (1) the department's standards for other projects of a similar nature, except as otherwise provided in the public-private agreement; and
- (2) any other applicable state or federal standards.

**Sec. 2.** Unless otherwise provided by federal law, the operator or any contractor or subcontractor of the operator engaged in the construction of a project is not required to comply with IC 4-13.6 or IC 5-16 concerning state public works, IC 5-17 concerning purchases of materials and supplies, or other statutes concerning procedures for procurement of public works or personal property as a condition of being awarded and performing work on the project.

**Sec. 3.** Each project constructed or operated under this article is considered to be part of the state highway system designated under IC 8-23-4-2 for purposes of identification, maintenance standards, and enforcement of traffic laws.

**Sec. 4.** An operator may enter into agreements for maintenance or other services under this article with the department and other local or state agencies. The department may:

- (1) with the assistance of all applicable local and state agencies, establish a unified permitting and licensing process for the processing and issuance of all necessary permits and licenses for projects under this article, including, but not limited to, all environmental permits and business and tax licenses; and
- (2) provide other services for which the department may be reimbursed, including, but not limited to, preliminary planning, environmental certification (including the procurement of all necessary environmental permits), right-of-way acquisition, utility relocations and adjustments, and preliminary design of projects under this article.

**Sec. 5.** The department shall seek the cooperation of federal and local agencies to expedite all necessary federal and local permits, licenses, and approvals necessary for projects under this article.

#### **Chapter 7. Taxation of Operators**

**Sec. 1.** A project under this article and tangible personal property used exclusively in connection with a project that are:

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- (1) owned by the authority or the department and leased, licensed, financed, or otherwise conveyed to an operator; or
- (2) acquired, constructed, or otherwise provided by an operator on behalf of the authority or the department;

under the terms of a public-private agreement are considered to be public property devoted to an essential public and governmental function and purpose. The property, and an operator's leasehold estate or interests in the property, are exempt from all ad valorem property taxes and special assessments levied against property by the state or any political subdivision of the state.

Sec. 2. An operator or any other person purchasing tangible personal property for incorporation into or improvement of a structure or facility constituting or becoming part of the land included in a project is entitled to the exemption from gross retail tax and use tax provided under IC 6-2.5-4-9(b) and IC 6-2.5-3-2(c), respectively, with respect to that tangible personal property.

Sec. 3. Income received by an operator under the terms of a public-private agreement is subject to taxation in the same manner as income received by other private entities.

#### Chapter 8. Financial Arrangements

Sec. 1. The authority or the department may do any combination of applying for, executing, or endorsing applications submitted by private entities to obtain federal, state, or local credit assistance for qualifying projects developed, financed, or operated under this article, including grants, loans, lines of credit, and guarantees.

Sec. 2. The authority or the department may take any action authorized by this article to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this article and may enter into any contracts required to receive the assistance.

Sec. 3. The authority or the department may agree to make grants or loans for any combination of the development, financing, or operation of a qualifying project from amounts received from the federal, state, or local government or any agency or instrumentality of the federal, state, or local government.

Sec. 4. The financing of a qualifying project may be in the amounts and upon the terms and conditions that are determined by the parties to the public-private agreement.

Sec. 5. For the purpose of financing a qualifying project, the operator and the authority or the department may do the following:

- (1) Propose to use all or part of the revenues available to them.

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- (2) Enter into grant agreements.
- (3) Access any designated transportation trust funds.
- (4) Access any other funds available to the authority or the department and the operator.
- (5) Accept grants from the authority, the port commission, any other state infrastructure bank, or any other agency or entity.

**Sec. 6. (a)** For the purpose of financing a qualifying project, the authority may enter into agreements, leases, or subleases with the department or an operator, or both, and do the following:

- (1) Issue bonds, debt, or other obligations under IC 4-4-11, IC 8-15-2, or IC 8-15.7-9.
- (2) Enter into loan agreements or other credit facilities.
- (3) Secure any financing with a pledge of, security interest in, or lien on all or part of a property subject to the agreement, including all of the party's property interests in the qualifying project.
- (4) Subject to review by the budget committee established in IC 4-12-1-3 and approval by the budget director appointed under IC 4-12-1-3:

(A) establish a procedure for the authority or a person acting on behalf of the authority to certify to the general assembly the amount needed to pay costs incurred under a public-private agreement; or

(B) otherwise create a moral obligation of the state to pay all or part of any costs incurred by the authority under a public-private agreement.

**(b)** The department and an operator may transfer any interest in property that the department or operator has to the authority to secure the financing.

**Sec. 7.** Public funds may be used for the purpose of financing a qualifying project and may be mixed and aggregated with funds provided by or on behalf of the operator or other private entities.

**Sec. 8.** For the purpose of financing a qualifying project, the authority and the operator may apply for, obtain, issue, and use private activity bonds available under any federal law or program.

**Sec. 9.** Any bonds, debt, other securities, or other financing issued for the purposes of this article shall not be considered to constitute a debt of the state or any political subdivision of the state or a pledge of the faith and credit of the state or any political subdivision.

#### **Chapter 9. Issuance of Debt by Authority**

**Sec. 1. (a)** The authority may, by resolution, issue and sell bonds

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or notes of the authority for the purpose of providing funds to carry out the provisions of this article with respect to the development, financing, or operation of a project or projects or the refunding of any bonds or notes, together with any costs associated with a transaction.

(b) Bonds or notes issued under this chapter shall be issued in accordance with IC 8-14.5-6 except that the bonds or notes are not required to comply with IC 8-14.5-6-2, IC 8-14.5-6-3, or IC 8-14.5-6-5(b).

Sec. 2. (a) The authority may enter into a lease with the department or the operator, or both, of a project or projects financed under this chapter. The department may lease a project financed under this chapter to the authority or an operator under a public-private agreement.

(b) A lease of a project to the department under this chapter must comply with IC 8-14.5-5 except that:

- (1) the lease is not required to comply with IC 8-14.5-5-3(a)(1); and
- (2) notwithstanding IC 8-14.5-5-2(a)(2), a lease under this chapter may be extended from biennium to biennium, with the extensions not to exceed a lease term of seventy-five (75) years unless the department gives notice of nonextension at least six (6) months before the end of the biennium, in which event the lease expires at the end of the biennium in which the notice is given.

Sec. 3. The department shall pay lease rentals for leases that the department has entered into under this chapter that secure bonds issued under this chapter from any legally available revenues, including:

- (1) payments received from an operator;
- (2) federal highway revenues, subject to the limitations in IC 8-14.5-7;
- (3) distributions from the state highway fund; and
- (4) other funds available to the department for such purpose.

Sec. 4. The bonds or notes issued under this chapter:

- (1) constitute the corporate obligations of the authority;
- (2) do not constitute an indebtedness of the state within the meaning or application of any constitutional provision or limitation; and
- (3) are payable solely as to both principal and interest from:
  - (A) the revenues from a lease to the department, if any;
  - (B) proceeds of bonds or notes, if any;

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- (C) investment earnings on proceeds of bonds or notes; or
- (D) other funds available to the authority for such purpose.

#### **Chapter 10. Acquisition of Property**

**Sec. 1. (a)** A public entity may dedicate any property interest that it has for public use as a qualifying project if the public entity finds that dedication of the property interest will serve the public purpose of this article. In connection with the dedication, a public entity may convey any property interest that the public entity has to the operator, subject to the:

- (1) conditions imposed by general law governing conveyances; and
- (2) provisions of this article;

for the consideration that the public entity considers appropriate.

(b) Consideration for a transfer under this section may include an agreement with the operator to develop, finance, or operate the qualifying project. The property interests that the public entity may convey to the operator in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest that the public entity considers appropriate.

**Sec. 2.** The authority, the department, and an operator may enter into the leases, licenses, easements, and other grants of property interests that the department determines necessary to carry out this article.

#### **Chapter 11. Law Enforcement**

**Sec. 1.** All law enforcement officers of the state and of each affected jurisdiction have the same powers and jurisdiction within the limits of the qualifying project as they have in their respective areas of jurisdiction.

**Sec. 2.** Law enforcement officers shall have access to the qualifying project at any time for the purpose of exercising the law enforcement officer's powers and jurisdiction. This authority does not extend to the private offices, buildings, garages, and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

**Sec. 3. (a)** The traffic and motor vehicle laws of Indiana or, if applicable, any local jurisdiction apply to conduct on a qualifying project to the same extent as they apply to conduct on similar projects in Indiana or the local jurisdiction.

(b) Punishment for infractions and offenses shall be as prescribed by law for conduct occurring on similar projects in Indiana or the local jurisdiction.

#### **Chapter 12. Resolution of Disputes**

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**Sec. 1.** The department has exclusive jurisdiction to adjudicate all matters specifically committed to the department's jurisdiction by this article.

**Sec. 2.** The department shall establish an expedited method for resolving disputes between the department and the parties to a public-private agreement and shall set forth that method in the public-private agreement.

**Sec. 3.** The department may pay, pursue, mediate, and settle any claim arising out of a public-private agreement.

**Sec. 4.** A public-private agreement may permit a party to the agreement to submit any claim arising under the agreement to arbitration or alternative dispute resolution under IC 34-57.

#### **Chapter 13. Term of Agreement; Reversion of Property to State**

**Sec. 1.** The term of a public-private agreement, including all extensions, may not exceed seventy-five (75) years. For purposes of measuring the term, the term begins on the date on which operations of a part of the qualifying project by the operator commences.

**Sec. 2.** The department shall terminate the operator's authority and duties under the public-private agreement on the date set forth in the public-private agreement.

**Sec. 3.** Upon termination of the public-private agreement, the authority and duties of the operator under this article cease, except for any duties and obligations that extend beyond the termination as set forth in the public-private agreement, and the qualifying project reverts to the department and shall be dedicated to the department for public use.

#### **Chapter 14. Additional Powers of the Authority and the Department With Respect to Qualifying Projects**

**Sec. 1.** The authority or the department may exercise any powers provided under this article in participation or cooperation with any governmental entity and enter into any contracts to facilitate that participation or cooperation without compliance with any other statute.

**Sec. 2.** The authority or the department may make and enter into all contracts and agreements necessary or incidental to the performance of the authority's or department's duties and the execution of the authority's or department's powers under this article. These contracts or agreements are not subject to any approvals other than the approval of the authority or the department, as applicable, and may be for any term of years and contain any terms that are considered reasonable by the authority

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or the department.

**Sec. 3.** The authority or the department may pay the costs incurred under a public-private agreement entered into under this article from any funds legally available to the authority or the department under this article or any other statute.

**Sec. 4.** For purposes of this article, the department may authorize an operator under a public-private agreement to perform any of its duties under IC 8-15-3-9, IC 8-15-3-16, IC 8-15-3-29, IC 8-15-3-30, and IC 8-15-3-33.

**Sec. 5.** The department may exercise any of its powers under IC 8-15-3 as necessary or desirable for the performance of its duties and the execution of its powers under this article. In connection with or in anticipation of the exercise by the authority of any powers granted to the authority by this article, the department may authorize the authority to exercise all or part of the powers of the department under this article as necessary or desirable to accomplish the purposes of this article.

**Sec. 6.** The authority or the department may not take any action under this chapter that would impair the public-private agreement entered into under this article.

**Sec. 7. (a)** The department shall enter into an agreement between and among the operator, the department, and the state police department concerning the provision of law enforcement assistance with respect to a qualifying project that is the subject of a public-private agreement under this article.

**(b)** The department may enter into arrangements with the state police department related to costs incurred in providing law enforcement assistance under this article.

#### **Chapter 15. Prohibited Local Action**

**Sec. 1.** A political subdivision (as defined in IC 36-1-2-13) may not take any action that would impair a public-private agreement under this article.

#### **Chapter 16. Prohibited Political Contributions**

**Sec. 1.** The definitions in IC 3-5-2 apply to this chapter to the extent they do not conflict with the definitions in this article.

**Sec. 2.** As used in this chapter, "candidate" refers to any of the following:

- (1) A candidate for a state office.
- (2) A candidate for a legislative office.
- (3) A candidate for a local office.

**Sec. 3.** As used in this chapter, "committee" refers to any of the following:

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- (1) A candidate's committee.
- (2) A regular party committee.
- (3) A committee organized by a legislative caucus of the house of representatives of the general assembly.
- (4) A committee organized by a legislative caucus of the senate of the general assembly.

**Sec. 4.** As used in this chapter, "officer" refers only to either of the following:

- (1) An individual listed as an officer of a corporation in the corporation's most recent annual report.
- (2) An individual who is a successor to an individual described in subdivision (1).

**Sec. 5.** For purposes of this chapter, a person is considered to have an interest in an operator if the person satisfies any of the following:

- (1) The person holds at least a one percent (1%) interest in an operator.
- (2) The person is an officer of an operator.
- (3) The person is an officer of a person that holds at least a one percent (1%) interest in an operator.
- (4) The person is a political action committee of an operator.

**Sec. 6.** An operator is considered to have made a contribution if a contribution is made by a person who has an interest in the operator.

**Sec. 7.** An operator or a person who has an interest in an operator may not make a contribution to a candidate or a committee during the following periods:

- (1) The term during which the operator is a party to a public-private agreement entered into under this article.
- (2) The three (3) years following the final expiration or termination of the public-private agreement described in subdivision (1).

**Sec. 8.** A person who knowingly or intentionally violates this chapter commits a Class D felony.

SECTION 41. IC 8-23-7-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) **Subject to subsection (b)**, the department may, after issuing an order and receiving the governor's approval, determine that a state highway should become a tollway. After the order becomes effective, the department shall maintain and operate the tollway and levy and collect tolls as provided in IC 8-15-3 **or enter into a public-private agreement with an operator with respect to the tollway under**

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**IC 8-15.7.** Before issuing an order under this section, the department shall submit to the governor a plan to bring the tollway to the current design standards of the department for new state highways within a specified period. The specified period may not exceed five (5) years.

**(b) Notwithstanding any other law, the governor, the department, or an operator may not carry out any of the following activities under this section unless the general assembly enacts a statute authorizing that activity:**

**(1) Determine that a highway, other than Interstate Highway 69 between Interstate Highway 64 and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740), should become a tollway.**

**(2) Carry out construction for Interstate Highway 69 in a township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).**

**(3) Impose tolls on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

SECTION 42. IC 8-23-7-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) **Subject to subsection (c)**, the department may, after issuing an order and receiving the governor's approval, determine that a state highway should become a toll road. An order under this section does not become effective unless the authority adopts a resolution to accept the designated state highway, or part of the highway, as a toll road project under the conditions contained in the order. An order issued by the department under this section must set forth the conditions upon which the transfer of the state highway, or part of the highway, to the authority must occur, including the following:

**(1) The consideration, if any, to be paid by the authority to the department.**

**(2) A requirement that the authority:**

**(A) enter into a contract or lease with the department with respect to the toll road project under IC 8-9.5-8-7 or IC 8-9.5-8-8; or**

**(B) enter into a public-private agreement with an operator with respect to the toll road under IC 8-15.5.**

**(b) To complete a transfer under this section, the department must, with the governor's approval, execute a certificate describing the real**

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and personal property constituting or to be transferred with the state highway that is to become a toll road project. Upon delivery of the certificate to the authority, the real and personal property described in the certificate is under the jurisdiction and control of the authority.

**(c) Notwithstanding any other law, neither the authority nor an operator may carry out any of the following activities under this section unless the general assembly enacts a statute authorizing that activity:**

- (1) Carrying out construction for Interstate Highway 69 in a township having a population of more than seventy-five thousand (75,000) and less than ninety-three thousand five hundred (93,500).**
- (2) Imposing tolls on motor vehicles for use of the part of an interstate highway that connects a consolidated city and a city having a population of more than eleven thousand five hundred (11,500) but less than eleven thousand seven hundred forty (11,740).**

SECTION 43. IC 8-23-9-54 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 54. (a) To provide funds for carrying out the provisions of this chapter, there is created a state highway fund from the following sources:

- (1) All money in the general fund to the credit of the state highway account.
- (2) All money that is received from the Department of Transportation or other federal agency and known as federal aid.
- (3) All money paid into the state treasury to reimburse the state for money paid out of the state highway fund.
- (4) All money provided by Indiana law for the construction, maintenance, reconstruction, repair, and control of public highways, as provided under this chapter.
- (5) All money that on May 22, 1933, was to be paid into the state highway fund under contemplation of any statute in force as of May 22, 1933.
- (6) All money that may at any time be appropriated from the state treasury.
- (7) Any part of the state highway fund unexpended at the expiration of any fiscal year, which shall remain in the fund and be available for the succeeding years.
- (8) Any money credited to the state highway fund from the motor vehicle highway account under IC 8-14-1-3(4).
- (9) Any money credited to the state highway fund from the highway road and street fund under IC 8-14-2-3.

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(10) Any money credited to the state highway fund under IC 6-6-1.1-801.5, IC 6-6-4.1-5, or IC 8-16-1-17.1.

**(11) Any money distributed to the state highway fund under IC 8-14-14, IC 8-15.5, or IC 8-15.7.**

(b) All expenses incurred in carrying out this chapter shall be paid out of the state highway fund.

SECTION 44. IC 9-13-2-6.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 6.3. "Automated traffic law enforcement system", for purposes of IC 9-21, has the meaning set forth in IC 9-21-3.5-2.**

SECTION 45. IC 9-21-3.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 3.5. Automated Traffic Law Enforcement System**

**Sec. 1.** As used in this chapter, "authority" refers to the Indiana finance authority.

**Sec. 2.** As used in this chapter, "automated traffic law enforcement system" means a device that:

- (1) has one (1) or more motor vehicle sensors; and
- (2) is capable of producing a photographically recorded image of a motor vehicle, including an image of the vehicle's front or rear license plate, as the vehicle proceeds through a tollgate, toll zone, or other area on a tollway, qualifying project, or toll road that is marked as required by the department, the authority, or an operator as a place where a person using the tollway, qualifying project, or toll road must pay a toll or is otherwise subject to a fee for using the tollway, qualifying project, or toll road.

**Sec. 3.** As used in this chapter, "department" refers to the Indiana department of transportation.

**Sec. 4.** As used in this chapter, "operator" has the meaning set forth in IC 8-15.5-2-5 or IC 8-15.7-2-11.

**Sec. 5.** As used in this chapter, "owner" means a person in whose name a motor vehicle is registered under:

- (1) IC 9-18;
- (2) the laws of another state;
- (3) the laws of a foreign country; or
- (4) the International Registration Plan.

**Sec. 6.** As used in this chapter, "qualifying project" has the meaning set forth in IC 8-15.7-2-16.

**Sec. 7.** As used in this chapter, "toll road" has the meaning set

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forth for "toll road project" in IC 8-15-2-4(4).

Sec. 8. As used in this chapter, "tollway" has the meaning set forth in IC 8-15-3-7.

Sec. 9. The owner of a motor vehicle, other than an authorized emergency vehicle, that is driven or towed through a toll collection facility on a toll road, tollway, or qualifying project shall pay the proper toll.

Sec. 10. The department or the authority may adopt and enforce rules concerning:

- (1) the placement and use of automated traffic law enforcement systems to enforce collection of user fees;
- (2) required notification to owners of toll violations;
- (3) the process for collection and enforcement of unpaid amounts;
- (4) the amount of fines, charges, and assessments for toll violations; and
- (5) other matters relating to automated traffic law enforcement systems that the department or the authority considers appropriate.

Sec. 11. Before enforcing a rule adopted under section 10 of this chapter, the department, the authority, or an operator must install advance warning signs along the tollways, toll roads, or qualifying projects proceeding to the location at which an automated traffic law enforcement system is located.

Sec. 12. (a) In the prosecution of a toll violation, proof that the motor vehicle was driven or towed through the toll collection facility without payment of the proper toll may be shown by a video recording, a photograph, an electronic recording, or other appropriate evidence, including evidence obtained by an automated traffic law enforcement system.

(b) In the prosecution of a toll violation:

- (1) it is presumed that any notice of nonpayment was received on the fifth day after the date of mailing; and
- (2) a computer record of the department, the authority, or the operator of the registered owner of the vehicle is prima facie evidence of its contents and that the toll violator was the registered owner of the vehicle at the time of the underlying event of nonpayment.

Sec. 13. (a) For purposes of this section, "transponder" means a device, placed on or within a motor vehicle, that is capable of transmitting information used to assess or collect tolls. A transponder is "insufficiently funded" when there are no

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remaining funds in the account in connection with which the transponder was issued.

(b) Any police officer of Indiana may seize a stolen or insufficiently funded transponder and return it to the department, the authority, or an operator, except that an insufficiently funded transponder may not be seized from the holder of an account sooner than the thirtieth day after the date the department, the authority, or an operator has sent a notice of delinquency to the holder of the account.

(c) The department or the authority may enter into an agreement with one (1) or more persons to market and sell transponders for use on tollways, toll roads, or qualifying projects.

(d) The department, the authority, or an operator may charge reasonable fees for initiating, administering, and maintaining electronic toll collection customer accounts.

(e) Electronic toll collection customer account information, including contact and payment information and trip data, is confidential and not subject to disclosure under IC 5-14-3. A contract for the acquisition, construction, maintenance, or operation of a tollway, toll road, or qualifying project must ensure the confidentiality of all electronic toll collection customer account information.

SECTION 46. IC 22-4-25-1, AS AMENDED BY P.L.202-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) There is created in the state treasury a special fund to be known as the special employment and training services fund. All interest on delinquent contributions and penalties collected under this article, together with any voluntary contributions tendered as a contribution to this fund, shall be paid into this fund. The money shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would in the absence of said money be available to finance expenditures for the administration of this article, but nothing in this section shall prevent said money from being used as a revolving fund to cover expenditures necessary and proper under the law for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. The money in this fund shall be used by the board for the payment of refunds of interest on delinquent contributions and penalties so collected, for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants or other funds received for or in the employment and

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training services administration fund, on and after July 1, 1945. Such money shall be available either to satisfy the obligations incurred by the board directly, or by transfer by the board of the required amount from the special employment and training services fund to the employment and training services administration fund. No expenditure of this fund shall be made unless and until the board finds that no other funds are available or can properly be used to finance such expenditures, except that expenditures from said fund may be made for the purpose of acquiring lands and buildings or for the erection of buildings on lands so acquired which are deemed necessary by the board for the proper administration of this article. The board shall order the transfer of such funds or the payment of any such obligation or expenditure and such funds shall be paid by the treasurer of state on requisition drawn by the board directing the auditor of state to issue the auditor's warrant therefor. Any such warrant shall be drawn by the state auditor based upon vouchers certified by the board or the commissioner. The money in this fund is hereby specifically made available to replace within a reasonable time any money received by this state pursuant to 42 U.S.C. 502, as amended, which, because of any action or contingency, has been lost or has been expended for purposes other than or in amounts in excess of those approved by the bureau of employment security. The money in this fund shall be continuously available to the board for expenditures in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as provided in this article. Nothing in this section shall be construed to limit, alter, or amend the liability of the state assumed and created by IC 22-4-28, or to change the procedure prescribed in IC 22-4-28 for the satisfaction of such liability, except to the extent that such liability may be satisfied by and out of the funds of such special employment and training services fund created by this section.

(b) The board, subject to the approval of the budget agency and governor, is authorized and empowered to use all or any part of the funds in the special employment and training services fund for the purpose of acquiring suitable office space for the department by way of purchase, lease, contract, or in any part thereof to purchase land and erect thereon such buildings as the board determines necessary or to assist in financing the construction of any building erected by the state or any of its agencies wherein available space will be provided for the department under lease or contract between the department and the state or such other agency. The commissioner may transfer from the employment and training services administration fund to the special

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employment and training services fund amounts not exceeding funds specifically available to the commissioner for that purpose equivalent to the fair, reasonable rental value of any land and buildings acquired for its use until such time as the full amount of the purchase price of such land and buildings and such cost of repair and maintenance thereof as was expended from the special employment and training services fund has been returned to such fund.

(c) The board may also transfer from the employment and training services administration fund to the special employment and training services fund amounts not exceeding funds specifically available to the commissioner for that purpose equivalent to the fair, reasonable rental value of space used by the department in any building erected by the state or any of its agencies until such time as the department's proportionate amount of the purchase price of such building and the department's proportionate amount of such cost of repair and maintenance thereof as was expended from the special employment and training services fund has been returned to such fund.

(d) Whenever the balance in the special employment and training services fund is deemed excessive by the board, the board shall order payment into the unemployment insurance benefit fund of the amount of the special employment and training services fund deemed to be excessive.

(e) Subject to the approval of the board, the commissioner may use not more than five million dollars (\$5,000,000) during a program year for training provided by the state educational institution established under IC 20-12-61 to participants in joint labor and management apprenticeship programs approved by the United States Department of Labor's Bureau of Apprenticeship Training. Of the money allocated for training programs under this subsection, fifty percent (50%) is designated for industrial programs, and the remaining fifty (50%) percent is designated for building trade programs.

(f) The commissioner shall allocate an amount not to exceed four hundred fifty thousand dollars (\$450,000) annually for training and counseling assistance under IC 22-4-14-2 provided by state educational institutions (as defined in IC 20-12-0.5-1) or counseling provided by the department of workforce development for individuals who:

- (1) have been unemployed for at least four (4) weeks;
- (2) are not otherwise eligible for training and counseling assistance under any other program; and
- (3) are not participating in programs that duplicate those programs described in subsection (e).

Training or counseling provided under IC 22-4-14-2 does not excuse

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the claimant from complying with the requirements of IC 22-4-14-3. Eligibility for training and counseling assistance under this subsection shall not be determined until after the fourth week of eligibility for unemployment training compensation benefits. The training and counseling assistance programs funded by this subsection must be approved by the United States Department of Labor's Bureau of Apprenticeship Training.

SECTION 47. IC 22-4-25-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.5. (a) In support of IC 8-14-14, IC 8-15-2, IC 8-15-3, and IC 8-15.5, the commissioner shall allocate an amount not to exceed two million dollars (\$2,000,000) annually for pre-apprenticeship and apprenticeship training and counseling assistance relating to the construction trades for individuals who:**

- (1) are not otherwise eligible for training and counseling assistance under any other program; and**
- (2) are not participating in programs that duplicate those programs described in section 1(e) of this chapter.**

**Priority shall be granted to training or counseling persons who are members of a minority group (as defined by IC 4-13-16.5-1). The training and counseling assistance programs funded by this section must be approved by the department.**

**(b) This section expires December 31, 2012.**

SECTION 48. IC 34-13-3-3, AS AMENDED BY P.L.208-2005, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:**

- (1) The natural condition of unimproved property.**
- (2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.**
- (3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.**
- (4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.**
- (5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:**
  - (A) a set of rules governing the use of the extreme sport area;**
  - (B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and**

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(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

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(18) Design of a highway (as defined in IC 9-13-2-73), **toll road project (as defined in IC 8-15-2-4(4))**, **tollway (as defined in IC 8-15-3-7)**, or **project (as defined in IC 8-15.7-2-14)** if the claimed loss occurs at least twenty (20) years after the public highway, **toll road project, tollway, or project** was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-7(b).

(21) An error resulting from or caused by a failure to recognize the year 1999, 2000, or a subsequent year, including an incorrect date or incorrect mechanical or electronic interpretation of a date, that is produced, calculated, or generated by:

- (A) a computer;
- (B) an information system; or
- (C) equipment using microchips;

that is owned or operated by a governmental entity. However, this subdivision does not apply to acts or omissions amounting to gross negligence, willful or wanton misconduct, or intentional misconduct. For purposes of this subdivision, evidence of gross negligence may be established by a party by showing failure of a governmental entity to undertake an effort to review, analyze, remediate, and test its electronic information systems or by showing failure of a governmental entity to abate, upon notice, an electronic information system error that caused damage or loss. However, this subdivision expires June 30, 2003.

(22) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(23) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

- (A) the loss is a result of reckless conduct; or
- (B) the governmental entity was responsible for the initial

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placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

SECTION 49. IC 36-7.5-1-11, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. "Eligible county" refers to the following counties:

- (1) A county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).
- (2) A county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000).
- (3) A county having a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000), if:**

**(A) the fiscal body of the county has adopted an ordinance under IC 36-7.5-2-3(e) providing that the county is joining the development authority; and**

**(B) the fiscal body of the city described in IC 36-7.5-2-3(e) has adopted an ordinance under IC 36-7.5-2-3(e) providing that the city is joining the development authority.**

SECTION 50. IC 36-7.5-1-12, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. "Eligible political subdivision" means the following:

- (1) An airport authority.
- (2) A commuter transportation district.
- (3) A regional bus authority under IC 36-9-3-2(c).
- (4) A regional transportation authority established under IC 36-9-3-2.**
- ~~(4)~~ **(5) A shoreline development commission under IC 36-7-13.5.**

SECTION 51. IC 36-7.5-1-13, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. "Project" means an airport authority project, a commuter transportation district project, an economic development project, a regional bus authority project, **a regional transportation authority project**, or a shoreline development commission project.

SECTION 52. IC 36-7.5-1-15.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.3. "Regional transportation authority" means a regional transportation**

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**authority established under IC 36-9-3-2.**

SECTION 53. IC 36-7.5-1-15.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 15.6. "Regional transportation authority project" means a project that can be financed with the proceeds of bonds issued by a regional transportation authority under IC 36-9-3.**

SECTION 54. IC 36-7.5-2-1, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The northwest Indiana regional development authority is established as a separate body corporate and politic to carry out the purposes of this article by:

- (1) acquiring, constructing, equipping, owning, leasing, and financing projects and facilities for lease to or for the benefit of eligible political subdivisions under this article; ~~and~~
- (2) funding and developing the Gary/Chicago International Airport expansion and other airport authority projects, commuter transportation district and other rail projects and services, regional bus authority projects and services, **regional transportation authority projects and services**, shoreline development projects and activities, and economic development projects in northwestern Indiana; **and**
- (3) assisting with the funding of infrastructure needed to sustain development of an intermodal facility in northwestern Indiana.**

SECTION 55. IC 36-7.5-2-3, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The development authority is governed by the development board appointed under this section.

(b) **Except as provided in subsections (e) and (f),** the development board is composed of the following seven (7) members:

- (1) Two (2) members appointed by the governor. One (1) of the members appointed by the governor under this subdivision must be an individual nominated under subsection (d). The members appointed by the governor under this subdivision serve at the pleasure of the governor.
- (2) The following members from a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000):
  - (A) One (1) member appointed by the mayor of the largest city in the county in which a riverboat is located.
  - (B) One (1) member appointed by the mayor of the second largest city in the county in which a riverboat is located.

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(C) One (1) member appointed by the mayor of the third largest city in the county in which a riverboat is located.

(D) One (1) member appointed jointly by the county executive and the county fiscal body. A member appointed under this clause may not reside in a city described in clause (A), (B), or (C).

(3) One (1) member appointed jointly by the county executive and county fiscal body of a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000).

(c) A member appointed to the development board must have knowledge and at least five (5) years professional work experience in at least one (1) of the following:

- (1) Rail transportation or air transportation.
- (2) Regional economic development.
- (3) Business or finance.

(d) The mayor of the largest city in a county having a population of more than one hundred forty-five thousand (145,000) but less than one hundred forty-eight thousand (148,000) shall nominate three (3) residents of the county for appointment to the development board. One (1) of the governor's initial appointments under subsection (b)(1) must be an individual nominated by the mayor. At the expiration of the member's term, the mayor of the second largest city in the county shall nominate three (3) residents of the county for appointment to the development board. One (1) of the governor's appointments under subsection (b)(1) must be an individual nominated by the mayor. Thereafter, the authority to nominate the three (3) members from which the governor shall make an appointment under subsection (b)(1) shall alternate between the mayors of the largest and the second largest city in the county at the expiration of a member's term.

**(e) A county having a population of more than one hundred ten thousand (110,000) but less than one hundred fifteen thousand (115,000) shall be an eligible county participating in the development authority if the fiscal body of the county adopts an ordinance before September 15, 2006, providing that the county is joining the development authority, and the fiscal body of a city that is located in the county and that has a population of more than thirty-two thousand eight hundred (32,800) but less than thirty-three thousand (33,000) adopts an ordinance before September 15, 2006, providing that the city is joining the development authority. Notwithstanding subsection (b), if ordinances are adopted under this subsection and the county becomes an eligible county participating in the development**

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authority:

- (1) the development board shall be composed of nine (9) members rather than seven (7) members; and
- (2) the additional two (2) members shall be appointed in the following manner:

(A) One (1) additional member shall be appointed by the governor and shall serve at the pleasure of the governor. The member appointed under this clause must be an individual nominated under subsection (f).

(B) One (1) additional member shall be appointed jointly by the county executive and county fiscal body.

(f) This subsection applies only if the county described in subsection (e) is an eligible county participating in the development authority. The mayor of the largest city in the county described in subsection (e) shall nominate three (3) residents of the county for appointment to the development board. The governor's initial appointment under subsection (e)(2)(A) must be an individual nominated by the mayor. At the expiration of the member's term, the mayor of the second largest city in the county described in subsection (e) shall nominate three (3) residents of the county for appointment to the development board. The governor's second appointment under subsection (e)(2)(A) must be an individual nominated by the mayor. Thereafter, the authority to nominate the three (3) individuals from among whom the governor shall make an appointment under subsection (e)(2)(A) shall alternate between the mayors of the largest and the second largest city in the county at the expiration of a member's term.

~~(e)~~ (g) An individual or entity required to make an appointment under subsection (b) or nominations under subsection (d) must make the initial appointment before September 1, 2005, or the initial nomination before August 15, 2005. If an individual or entity does not make an initial appointment under subsection (b) before September 1, 2005, or the initial nominations required under subsection (d) before September 1, 2005, the governor shall instead make the initial appointment.

SECTION 56. IC 36-7.5-2-4, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b) for the initial appointments to the development board, a member appointed to the development board serves a four (4) year term. However, a member serves at the pleasure of the appointing authority. A member may be reappointed to subsequent terms.

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(b) The terms of the initial members appointed to the development board are as follows:

(1) The initial member appointed by the governor who is not nominated under section 3(d) **or 3(f)** of this chapter shall serve a term of four (4) years.

(2) The initial member appointed by the governor who is nominated under section 3(d) of this chapter shall serve a term of two (2) years.

**If a member is appointed under section 3(e)(2)(A) of this chapter, the initial member who is appointed under that provision shall serve a term of two (2) years.**

(3) The initial member appointed under section 3(b)(2)(D) of this chapter shall serve a term of three (3) years.

(4) The initial member appointed under section 3(b)(3) of this chapter shall serve a term of three (3) years.

(5) The initial members appointed under section 3(b)(2)(A) through 3(b)(2)(C) of this chapter shall serve a term of two (2) years.

**(6) If a member is appointed under section 3(e)(2)(B) of this chapter, the initial member appointed under that provision shall serve a term of three (3) years.**

(c) If a vacancy occurs on the development board, the appointing authority that made the original appointment shall fill the vacancy by appointing a new member for the remainder of the vacated term.

(d) Each member appointed to the development board, before entering upon the duties of office, must take and subscribe an oath of office under IC 5-4-1, which shall be endorsed upon the certificate of appointment and filed with the records of the development board.

(e) A member appointed to the development board is not entitled to receive any compensation for performance of the member's duties. However, a member is entitled to a per diem from the development authority for the member's participation in development board meetings. The amount of the per diem is equal to the amount of the per diem provided under IC 4-10-11-2.1(b).

SECTION 57. IC 36-7.5-2-5, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The member appointed by the governor under section 3(b)(1) of this chapter but not nominated under section 3(d) **or 3(f)** of this chapter shall serve as chair of the development board until January 2013. At the election under subsection (b) in 2013 and each year thereafter, the chair shall be elected from among the members of the development board.

(b) In January of each year, the development board shall hold an organizational meeting at which the development board shall elect the

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following officers from the members of the development board:

- (1) After December 31, 2012, a chair.
- (2) A vice chair.
- (3) A secretary-treasurer.

(c) Not more than two (2) members from any particular county may serve as an officer described in subsection (a) or elected under subsection (b). The affirmative vote of at least five (5) members of the development board is necessary to elect an officer under subsection (b).

**However, if the county described in section 3(e) of this chapter is an eligible county participating in the development authority, the affirmative vote of at least six (6) members of the development board is necessary to elect an officer under subsection (b).**

(d) An officer elected under subsection (b) serves from the date of the officer's election until the officer's successor is elected and qualified.

SECTION 58. IC 36-7.5-2-6, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The development board shall meet at least quarterly.

(b) The chair of the development board or any two (2) members of the development board may call a special meeting of the development board.

(c) Five (5) members of the development board constitute a quorum. **However, if the county described in section 3(e) of this chapter is an eligible county participating in the development authority, six (6) members of the development board constitute a quorum.**

(d) The affirmative votes of at least five (5) members of the development board are necessary to authorize any action of the development authority. **However, if the county described in section 3(e) of this chapter is an eligible county participating in the development authority, the affirmative votes of at least six (6) members of the development board are necessary to authorize any action of the development authority.**

(e) Notwithstanding any other provision of this article, the minimum number of ~~at least five (5)~~ affirmative votes required under subsection (d) to take any of the following actions must include the affirmative vote of the member appointed by the governor who is not nominated under section 3(d) **or 3(f)** of this chapter:

- (1) Making loans, loan guarantees, or grants or providing any other funding or financial assistance for projects.
- (2) Acquiring or condemning property.
- (3) Entering into contracts.

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(4) Employing an executive director or any consultants or technical experts.

(5) Issuing bonds or entering into a lease of a project.

SECTION 59. IC 36-7.5-3-1, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. The development authority shall do the following:

- (1) Assist in the coordination of local efforts concerning projects.
- (2) Assist a commuter transportation district, an airport authority, a shoreline development commission, a **regional transportation authority**, and a regional bus authority in coordinating regional transportation and economic development efforts.
- (3) Fund projects as provided in this article.
- (4) Fund bus services (including fixed route services and flexible or demand-responsive services) and projects related to bus services and bus terminals, stations, or facilities.

SECTION 60. IC 36-7.5-3-2, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The development authority may do any of the following:

- (1) Finance, improve, construct, reconstruct, renovate, purchase, lease, acquire, and equip land and projects located in an eligible county.
- (2) Lease land or a project to an eligible political subdivision.
- (3) Finance and construct additional improvements to projects or other capital improvements owned by the development authority and lease them to or for the benefit of an eligible political subdivision.
- (4) Acquire land or all or a portion of one (1) or more projects from an eligible political subdivision by purchase or lease and lease the land or projects back to the eligible political subdivision, with any additional improvements that may be made to the land or projects.
- (5) Acquire all or a portion of one (1) or more projects from an eligible political subdivision by purchase or lease to fund or refund indebtedness incurred on account of the projects to enable the eligible political subdivision to make a savings in debt service obligations or lease rental obligations or to obtain relief from covenants that the eligible political subdivision considers to be unduly burdensome.
- (6) Make loans, loan guarantees, and grants or provide other financial assistance to or on behalf of the following:
  - (A) A commuter transportation district.

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- (B) An airport authority or airport development authority.
- (C) A shoreline development commission.
- (D) A regional bus authority. A loan, loan guarantee, grant, or other financial assistance under this clause may be used by a regional bus authority for acquiring, improving, operating, maintaining, financing, and supporting the following:
  - (i) Bus services (including fixed route services and flexible or demand-responsive services) that are a component of a public transportation system.
  - (ii) Bus terminals, stations, or facilities or other regional bus authority projects.

**(E) A regional transportation authority.**

- (7) Provide funding to assist a railroad that is providing commuter transportation services in an eligible county.
- (8) Provide funding to assist an airport authority located in an eligible county in the construction, reconstruction, renovation, purchase, lease, acquisition, and equipping of an airport facility or airport project.
- (9) Provide funding to assist in the development of an intermodal facility to facilitate the interchange and movement of freight.**
- ~~(9)~~ **(10)** Provide funding to assist a shoreline development commission in carrying out the purposes of IC 36-7-13.5.
- ~~(10)~~ **(11)** Provide funding for economic development projects in an eligible county.
- ~~(11)~~ **(12)** Hold, use, lease, rent, purchase, acquire, and dispose of by purchase, exchange, gift, bequest, grant, condemnation, lease, or sublease, on the terms and conditions determined by the development authority, any real or personal property located in an eligible county.
- ~~(12)~~ **(13)** After giving notice, enter upon any lots or lands for the purpose of surveying or examining them to determine the location of a project.
- ~~(13)~~ **(14)** Make or enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this article.
- ~~(14)~~ **(15)** Sue, be sued, plead, and be impleaded.
- ~~(15)~~ **(16)** Design, order, contract for, and construct, reconstruct, and renovate a project or improvements to a project.
- ~~(16)~~ **(17)** Appoint an executive director and employ appraisers, real estate experts, engineers, architects, surveyors, attorneys, accountants, auditors, clerks, construction managers, and any

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consultants or employees that are necessary or desired by the development authority in exercising its powers or carrying out its duties under this article.

~~(17)~~ **(18)** Accept loans, grants, and other forms of financial assistance from the federal government, the state government, a political subdivision, or any other public or private source.

~~(18)~~ **(19)** Use the development authority's funds to match federal grants or make loans, loan guarantees, or grants to carry out the development authority's powers and duties under this article.

~~(19)~~ **(20)** Except as prohibited by law, take any action necessary to carry out this article.

(b) If the development authority is unable to agree with the owners, lessees, or occupants of any real property selected for the purposes of this article, the development authority may proceed under IC 32-24-1 to procure the condemnation of the property. The development authority may not institute a proceeding until it has adopted a resolution that:

- (1) describes the real property sought to be acquired and the purpose for which the real property is to be used;
- (2) declares that the public interest and necessity require the acquisition by the development authority of the property involved; and
- (3) sets out any other facts that the development authority considers necessary or pertinent.

The resolution is conclusive evidence of the public necessity of the proposed acquisition.

SECTION 61. IC 36-7.5-4-2, AS ADDED BY P.L.214-2005, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) **Except as provided in subsection (b),** beginning in 2006 the fiscal officer of each city and county described in IC 36-7.5-2-3(b) ~~(other than the two (2) largest cities in a county described in IC 36-7.5-2-3(b)(1))~~ shall each transfer three million five hundred thousand dollars (\$3,500,000) each year to the development authority for deposit in the development authority fund established under section 1 of this chapter.

**(b) This subsection applies only if:**

- (1) the fiscal body of the county described in IC 36-7.5-2-3(e) has adopted an ordinance under IC 36-7.5-2-3(e) providing that the county is joining the development authority;**
- (2) the fiscal body of the city described in IC 36-7.5-2-3(e) has adopted an ordinance under IC 36-7.5-2-3(e) providing that the city is joining the development authority; and**

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**(3) the county described in IC 36-7.5-2-3(e) is an eligible county participating in the development authority.**

**Beginning in 2007, the fiscal officer of the county described in IC 36-7.5-2-3(e) shall transfer two million six hundred twenty-five thousand dollars (\$2,625,000) each year to the development authority for deposit in the development authority fund established under section 1 of this chapter. Beginning in 2007, the fiscal officer of the city described in IC 36-7.5-2-3(e) shall transfer eight hundred seventy-five thousand dollars (\$875,000) each year to the development authority for deposit in the development authority fund established under section 1 of this chapter.**

~~(b)~~ **(c)** The following apply to the transfers required by ~~subsection (a)~~ **subsections (a) and (b):**

**(1) Except for transfers of money described in subdivision (4)(D),** the transfers shall be made without appropriation by the city or county fiscal body or approval by any other entity.

**(2) Except as provided in subdivision (3),** after December 31, 2005, each fiscal officer shall transfer eight hundred seventy-five thousand dollars (\$875,000) to the development authority fund before the last business day of January, April, July, and October of each year. Food and beverage tax revenue deposited in the fund under IC 6-9-36-8 is in addition to the transfers required by this section.

**(3) After December 31, 2006, the fiscal officer of the county described in IC 36-7.5-2-3(e) shall transfer six hundred fifty-six thousand two hundred fifty dollars (\$656,250) to the development authority fund before the last business day of January, April, July, and October of each year. The county is not required to make any payments or transfers to the development authority covering any time before January 1, 2007. The fiscal officer of a city described in IC 36-7.5-2-3(e) shall transfer two hundred eighteen thousand seven hundred fifty dollars (\$218,750) to the development authority fund before the last business day of January, April, July, and October of each year. The city is not required to make any payments or transfers to the development authority covering any time before January 1, 2007.**

~~(3)~~ **(4)** The transfers shall be made from one (1) or more of the following:

**(A)** Riverboat admissions tax revenue received by the city or county, riverboat wagering tax revenue received by the city or county, or riverboat incentive payments received from a riverboat

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licensee by the city or county.

(B) Any county economic development income tax revenue received under IC 6-3.5-7 by the city or county.

(C) Any other local revenue other than property tax revenue received by the city or county.

**(D) In the case of a county described in IC 36-7.5-2-3(e) or a city described in IC 36-7.5-2-3(e), any money from the major moves construction fund that is distributed to the county or city under IC 8-14-16.**

SECTION 62. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "authority" and "user fees" have the meanings set forth in IC 8-15.5-2, as added by this act.

(b) The authority shall adopt a rule under IC 4-22-2-37.1, as amended by this act, fixing user fees, including a schedule of the user fees provided for under a public-private agreement entered into under IC 8-15.5-4, as added by this act, on or before January 1, 2007.

(c) This SECTION expires July 1, 2007.

SECTION 63. [EFFECTIVE UPON PASSAGE] The Indiana department of transportation may adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1, as amended by this act, to implement IC 8-15-3, as amended by this act, and IC 8-15.7, as added by this act. A temporary rule adopted under this SECTION expires on the earliest of the following:

- (1) The date that another temporary rule adopted under this SECTION supersedes or repeals the previously adopted temporary rule.
- (2) The date that a permanent rule adopted under IC 4-22-2 supersedes or repeals the temporary rule.
- (3) The date specified in the temporary rule.
- (4) January 1, 2008.

SECTION 64. [EFFECTIVE UPON PASSAGE] The provisions of this act are severable in the manner provided by IC 1-1-1-8(b).

SECTION 65. [EFFECTIVE UPON PASSAGE] (a) The definitions set forth in IC 8-15.5-2, as added by this act, apply throughout this SECTION.

(b) Actions taken with respect to:

- (1) the issuance of a request for proposals;
  - (2) the determination of responsible and eligible offerors; and
  - (3) the preliminary selection of an operator by the authority;
- for a public-private agreement before the effective date of this act

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that would have been valid under IC 8-15.5, as added by this act,  
are legalized and validated.

SECTION 66. An emergency is declared for this act.

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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